

## **EXHIBIT 4**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

18 CR 183 (WHP)

5 NICHOLAS GENOVESE,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 February 11, 2020  
2:30 p.m.

10 Before:

11 HON. WILLIAM H. PAULEY III,

12 District Judge

13 APPEARANCES

14  
15 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

16 SAMSON ENZER

17 Assistant United States Attorney

18 ALEXANDER EISEMANN

Attorney for Defendant

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1  
2 MR. ENZER: Good afternoon, your Honor, Samson Enzer  
3 for government, and with me at counsel table is Special Agent  
4 Kristin Allain from the FBI.

5 I will also note for the record, and I have informed  
6 your Honor's deputy of this, there are several victims in the  
7 courtroom.

8 THE COURT: Thank you Mr. Enzer.

9 MR. EISEMANN: Good afternoon, your Honor, Alex  
10 Eisemann for the defendant, who is sitting beside me. And I'd  
11 also like to introduce the only person in the room that I know,  
12 who is my client's mother. She is sitting in the second row,  
13 in the black-and-white striped shirt, and she came from Chicago  
14 for this.

15 THE COURT: Good afternoon, Mr. Eisemann. And I note  
16 the presence of the defendant, Nicholas Genovese, at counsel  
17 table.

18 This matter is on for sentencing. Are the parties  
19 ready to proceed?

20 MR. ENZER: Yes, your Honor.

21 MR. EISEMANN: Yes, your Honor.

22 THE COURT: Mr. Eisemann, have you reviewed the  
23 presentence investigation report with your client?

24 MR. EISEMANN: I did not review it him, but prior  
25 counsel, I guess Mr. Halperin represented to me that Mr.

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1 Genovese has the report and has reviewed it. He's reviewed the  
2 recommendation as well. I didn't go over it personally because  
3 that was done long before I came into the case.

4 THE COURT: Are there any factual matters in the  
5 report that the defendant believes warrant modification or  
6 correction?

7 MR. EISEMANN: There are, your Honor, some technical  
8 things in there. One, if you have the report, paragraph 5.

9 THE COURT: Why don't take the podium. It will be  
10 much easier.

11 MR. EISEMANN: I think paragraph 5 is where we start.  
12 There is a restitution figure there and, as your Honor knows,  
13 the government and the defense have revised that figure.

14 THE COURT: Yes.

15 MR. EISEMANN: The new figure is 11 point something  
16 million.

17 THE COURT: I'll physically change that in paragraph  
18 5L and 5M.

19 MR. EISEMANN: All right. I'm going to paragraph 9  
20 then. These are prepared by Mr. Halperin and I'm trying to  
21 make sure I'm understanding this particular one.

22 If I could have one moment.

23 The first sentence I'm going to tell you what the  
24 objection is and what I think it should read as. Which words I  
25 would change to do that are a little hard for me to go through

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1 because it's not black lined.

2 The first sentence should read: During the relevant  
3 period, Genovese was the founder and manager, not a managing  
4 director, of the general partner of Willow Creek Investments,  
5 LP, which should be defined as not the Willow Creek hedge fund,  
6 but the partnership, or the limited partnership in quotes.

7 That's because the investment of the partnership's  
8 capital was through a hedge fund, which is a category of pool  
9 investment funds, so the suggestion is the term partnership or  
10 limited partnership should replace Willow Creek hedge fund  
11 there and throughout the PSR.

12 THE COURT: What about that, Mr. Enzer?

13 MR. ENZER: No objection.

14 MR. EISEMANN: Your Honor, if you would like, I can go  
15 through after the sentencing the PSR and highlight the areas so  
16 that you don't have to go through and find them, and I can send  
17 that to chambers.

18 THE COURT: That would be fine.

19 MR. EISEMANN: Paragraph 15. The first word of the  
20 third line of the third sentence should read "issuers," not  
21 "SEC."

22 THE COURT: That line should read: Issuers, notifying  
23 the SEC that the Willow Creek hedge fund intended to begin  
24 offering securities?

25 MR. EISEMANN: Give me one second to catch up with

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1 you. It should be issuers notifying the SEC.

2 THE COURT: That's what I just said.

3 MR. EISEMANN: And the penultimate sentence should  
4 read: In the second form, Genovese marked the box for  
5 executive officer to identify his relationship with the issuer  
6 and further identified himself as the manager and general  
7 partner of Willow Creek Investments, LLP. As a technical thing  
8 I will make that change.

9 THE COURT: Any objection?

10 MR. ENZER: No, your Honor.

11 THE COURT: All right.

12 MR. EISEMANN: Paragraph 129 purports the sight --  
13 I'll let your Honor read it to yourself first, if that's  
14 helpful.

15 THE COURT: You can proceed.

16 MR. EISEMANN: It purports to cite information from  
17 the private placement memorandum. For example, it identifies  
18 Grant Thornton as "the auditor of the Willow Creek hedge fund."  
19 However, that private placement memorandum identifies Grant  
20 Thornton as the accountant for both partnerships which  
21 "reserves the right to use other and additional firms for other  
22 audit services." That's in the private placement memorandum at  
23 20.

24 In addition, the auditor subsection of the services  
25 provider section states that the partnership's books of account

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1 shall be treated as of the close of each fiscal year by Grant  
2 Thornton or any other independent accounting firm designated by  
3 the general partner, and that's at the private placement memo  
4 at 37.

5 So information concerning the amount of assets managed  
6 from the family of the Willow Creek investment advisor or  
7 number of employees employed at the various entities does not  
8 appear to be reported in the private placement memo, so the  
9 entire second sentence and the remainder of paragraph 19 should  
10 be deleted. Frankly, I am reading more than I am fully  
11 capturing it. Unless it's clear to your Honor, I would be  
12 willing to talk to Mr. Enzer about this and see whether we can  
13 reach agreement.

14 THE COURT: What's the government's view with respect  
15 to those changes and deleting the last sentence of paragraph  
16 19?

17 MR. ENZER: The last sentence, Genovese managed 4  
18 billion in assets?

19 THE COURT: Yes. That is the last sentence.

20 MR. ENZER: Can I confer with defense counsel for one  
21 second?

22 MR. EISEMANN: Your Honor, I think all these technical  
23 things, as we don't have some of the information we need, the  
24 government doesn't have it, they are technical, so is it  
25 possible to defer this and put a joint letter in saying what we

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1 agree to be changed and what we agree not to be changed and try  
2 and set the argument so your Honor can just make a decision  
3 based on that joint letter, as opposed to calling us back in to  
4 argue about something.

5 THE COURT: Why weren't these issues raised with  
6 probation?

7 MR. EISEMANN: They apparently were raised only by --  
8 there were three main lawyers in here. There was Ed Little,  
9 Jonathan Halperin, and there was me.

10 Ed Little raised one objection, which is in the  
11 presentence report and was addressed by the probation officer.

12 When Halperin took over the case, he looked and saw  
13 these technical things that weren't right and was planning on  
14 putting them in at the time of sentencing, and I adopted that  
15 as well. It's a little bit of a problem with handing off from  
16 one lawyer to the next.

17 THE COURT: There have been so many lawyers in the  
18 case.

19 MR. EISEMANN: At least when the main work was done  
20 there were three lawyers. And the handoff from the first  
21 lawyer, who didn't put in the objections the second lawyer  
22 thought should be put in, and I'm fairly agnostic about those  
23 things. I trust the work that they did. But because of doing  
24 this in court, the government is at a disadvantage because they  
25 don't have some of the documents saying that the private



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1 placement memo is not consistent with. I don't think it's  
2 going to make a difference with a sentence, frankly, all the  
3 ones I have in front of me, so if you allow me to defer these  
4 late objections to following the sentencing, I think we can  
5 move forward on it. I don't think they will make a difference.  
6 None of them are material.

7 THE COURT: How many more are there? Just give me a  
8 summary.

9 MR. EISEMANN: The next one talks about --

10 THE COURT: Let's press ahead so that I know what the  
11 objections are.

12 MR. EISEMANN: OK. I'll give you a quick snapshot of  
13 what they are. Paragraph 32 has something about the  
14 restitution figure which has been corrected. Your Honor's  
15 going to correct that with my assistance.

16 There's an issue about -- I addressed this in my  
17 sentencing memorandum, the second letter I just put in. It is  
18 about Colony Hills Capital. It's a civil litigant and should  
19 be struck from the PSR because their funds were returned, so  
20 they shouldn't be included. That's paragraph 32 to 38 under  
21 the victim impacts. It's all before your Honor as to what  
22 happened.

23 THE COURT: Let me inquire of the government. With  
24 respect to victim impact relating to Colony Hills Capital, what  
25 does the government want to do with that?

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1 MR. ENZER: I don't have an objection to it being  
2 removed from the PSR, which is the immediate issue before the  
3 Court.

4 The broader issue of whether Colony Hills should be  
5 treated as a victim for restitution is something that is not  
6 clear yet. I have conferred with their counsel, but there is  
7 an open issue between us and between the defense as to whether  
8 they, A, are a restitution victim, and if so, B, what is the  
9 right amount of any restitution loss that they should be  
10 getting a recovery for.

11 THE COURT: But it seems to me for an entity to say  
12 that they forewent other opportunities is, one, rather  
13 speculative and, two, the defendant pled guilty in October of  
14 2018. If it's not worked out by the time of sentencing, when  
15 is it going to be worked out?

16 MR. EISEMANN: It's a restitution issue.

17 THE COURT: Lawyers love to put restitution over. Oh,  
18 Judge, we'll take care of it another time. It really doesn't  
19 work that way. I guess I'm going to let it work that way in  
20 this case because it's been such a struggle to get Mr. Genovese  
21 to sentencing.

22 So I'm going to strike paragraphs 33 through 38 from  
23 the presentence report.

24 MR. EISEMANN: I think also the end of paragraph 32  
25 where it says: To date one victim Colony Hills Capital.

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1 THE COURT: No. That's an accurate statement. Their  
2 law firm sent a letter to me.

3 MR. EISEMANN: One claimed victim then? Unless you're  
4 going to adopt that they are, in fact, a victim of the offense.

5 THE COURT: No. I'm leaving it the way it is.

6 MR. EISEMANN: OK.

7 THE COURT: That objection is overruled.

8 MR. EISEMANN: Paragraph 109, your Honor, talks about  
9 Mr. Genovese's health. It lists some problems with him. It  
10 says: Otherwise is in good health. But he has other problems  
11 that I've described in the submissions that you have and I'm  
12 going to amplify them a little bit here today as well. If you  
13 said, suffers at least from sinuses asthma, and struck the last  
14 sentence, he's otherwise in good health, that would be  
15 accurate.

16 THE COURT: Any objection?

17 MR. ENZER: No, your Honor.

18 THE COURT: All right. I'm making those changes to  
19 paragraph 109.

20 MR. EISEMANN: In the criminal history, to the extent  
21 that -- this is paragraph 81 and going forward.

22 THE COURT: Hold on. Go ahead.

23 MR. EISEMANN: In looking at paragraph 83 and 84, for  
24 example, stricken off, leave reinstated, I don't know what that  
25 means. I propose that notations be taken out of the report and

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1 just leave it blank.

2 MR. ENZER: No objection.

3 THE COURT: All right. Those notations are stricken  
4 at paragraphs 83 and 85.

5 MR. EISEMANN: Believe it or not your Honor, that's  
6 it.

7 THE COURT: All right.

8 MR. EISEMANN: The other ones, I'll write a letter and  
9 try and get the government's cooperation to be clear of what it  
10 is that we agree upon. I expect they'll probably agree on  
11 these things. If not, I'll highlight the area of disagreement  
12 and give it to your Honor to decide that on submission.

13 THE COURT: We've covered in substance the objections,  
14 right?

15 MR. EISEMANN: Yes.

16 THE COURT: OK. You'll submit such a letter to me by  
17 February 18, next Tuesday.

18 Mr. Enzer, are there any factual matters set forth in  
19 the presentence investigation report that the government  
20 believes warrant modification or correction?

21 MR. ENZER: No, your Honor.

22 THE COURT: All right. Now, with respect to this  
23 sentencing, I plan to proceed as follows:

24 First, I intend to hear from any victim who wishes to  
25 address the Court. After that, I'll entertain argument from

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1 defense counsel and then the government concerning sentencing  
2 and the 3553(a) factors. Finally, I will hear from the  
3 defendant, Mr. Genovese, if he wishes to address the Court.

4 So at this time I'm informed by the government that  
5 there are victims who wish to come forward and address the  
6 Court.

7 At this time I would call on Mitchell Levine to come  
8 forward to the podium.

9 Good afternoon, sir. If you could just state your  
10 name for the record.

11 MR. LEVINE: Mitchell Levine.

12 Thank you for the opportunity to make a statement  
13 regarding Nicholas Genovese, my relationship to him. I did  
14 submit a written statement which I assume that you have some  
15 familiarity with.

16 THE COURT: I have received that, yes.

17 MR. LEVINE: Thank you.

18 I just would like to give a little background on how I  
19 came to know Mr. Genovese and why I think he should be  
20 sentenced to the maximum that the law allows.

21 I actually came to meet Mr. Genovese through my  
22 hospital. I work at Lenox Hill Hospital. I'm a neurosurgeon  
23 in the department of neurosurgery. I received an email, which  
24 I'll just quickly read, which comes from an official email from  
25 my company email saying: Hi, everyone. I want to thank you

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1 for taking time out to meet with my friend tomorrow. I share  
2 some of the amazing things we do at Lenox Hill Hospital with  
3 him, and he requested to consider neurosurgery for  
4 philanthropy. He is interested and that's why I want to  
5 organize a hospital OR tour for him, him being Nicholas  
6 Genovese, and then spend some time sharing our key projects  
7 that can benefit from philanthropy. This was sent by an  
8 administrator in the neurosurgery department.

9 It says: Below is a short bio. This is, I think,  
10 what speaks to the fraud. It says: Nicholas Genovese,  
11 managing director and founder of Willow Creek Advisors LLC, is  
12 the main portfolio manager analyst who is primarily responsible  
13 for all of Willow Creek funds.

14 Mr. Genovese was a partner at Goldman Sachs, and prior  
15 to that was a portfolio manager and member of the investment  
16 strategy committee at Bear Sterns. He received a BS in finance  
17 from the University of Kentucky and an MBA in finance from  
18 Dartmouth Tuck Business School. We will send an agenda  
19 shortly. Please let me know if you have any objections.

20 This came to me through my official email from my  
21 hospital. We subsequently had a meeting with Mr. Genovese  
22 which was attended by myself and four of my colleagues in my  
23 department and the development office from Northwell Health and  
24 its Lenox Hill point person, so to speak, where we all talked  
25 with Mr. Genovese, and he presented himself as a manager of a

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1 very successful hedge fund with a lot of money.

2 He also stated -- because we asked him why, all of a  
3 sudden, is he giving us money. And he made the point that the  
4 charitable donations of his sizeable family charities were  
5 previously given to Salvation Army and that he wanted to divert  
6 some of these funds to a department where it would have a big  
7 impact, which makes sense. Because as a neurosurgery  
8 department, the proposed gift of about \$5 million would have  
9 been a transformative gift in terms of allowing us to endow  
10 chairs and further our academic mission.

11 So, from that point onward I started a relationship  
12 with Mr. Genovese, which he cultivated, and, to me, just not  
13 getting into the details, this was like quite a good con, if  
14 you had to say, the con being he presents himself as a  
15 prominent donor. He has this completely set of false  
16 credentials.

17 Whether he knew it or not, in the philanthropy  
18 business, because I went over this with my hospital, they do  
19 very little due diligence. They don't check that Nicholas  
20 Genovese really had all this money. They don't do any  
21 background check. They don't run the social security number.  
22 They do nothing.

23 And they are perfectly willing to take his money,  
24 which I didn't know about the lack of due diligence, but I  
25 think Nicholas did. And he then went along this path as

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1 presenting himself as a potential donor.

2 We treated him like royalty, obviously, because he was  
3 giving us a lot of money. We gave him private tours of the  
4 hospital. I took him to my laboratory and showed him my  
5 laboratory and scientists and all the good work that we are  
6 doing. And all this was done with the thought that he was who  
7 he said he was. It wasn't as if we were looking for a hedge  
8 fund to throw some money into and make more money. We were  
9 doing this as a source of philanthropy.

10 Through that, it validated in my mind that this guy  
11 was who he said he was. I am very naive and in my own head I  
12 was thinking, if Northwell Health believes him and they are  
13 pursuing them and made him an honored guest at our fundraising  
14 gala -- I believe he was actually in Florida, where he was  
15 apprehended, to attend a Northwell event. I'm not sure. I  
16 can't speak to that directly.

17 Essentially, what he did was he used that position as  
18 a potential donor, which went on and on for a long time,  
19 including letters of intent between his attorneys to give money  
20 to the hospital, which never materialized or always kind of  
21 delays that the money never came. But during that entire  
22 period, I stayed involved with him and he gained my trust and  
23 we became friends, I guess, and I was naive.

24 At some point, in terms of the fraud, he offered to me  
25 to buy shares in a pre-IPO, Pinterest investment. And he said



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1 that if I invested \$500,000, which is a hell of a lot of money  
2 for me, I've never done anything like this before ever, all my  
3 money has been managed by real money managers, and that was a  
4 lot of money for me, that I would get pre-IPO shares in  
5 Pinterest.

6 And, unfortunately, I did do due diligence, but not  
7 into Nicholas Genovese. I did due diligence into Pinterest and  
8 whether it's a good investment or not. And I found out it's a  
9 very good investment and it was rare for private individuals to  
10 get pre-IPO shares, and he explained to me how he was getting  
11 \$20 million worth of shares, this transfer of shares of Willow  
12 Creek, and he would then, because he liked me kind of, allow me  
13 to invest this money, and my friend invested a million dollars.

14 And basically he took this money for pre-IPO shares,  
15 which was a total fraud. He didn't have pre-IPO shares. He  
16 wasn't legally able to sell pre-IPO shares. This was a  
17 complete fraud.

18 It's not like he lost money. He took money to sell  
19 something like selling the Brooklyn Bridge. He didn't own it,  
20 he didn't have the shares. It was a complete 100 percent  
21 fraud. When I asked him about it, I said: Why don't I get  
22 certificates? Why don't I have some legal piece of paper  
23 saying I own these shares? He said: No. At Willow Creek  
24 everything is held in Willow Creek, and I logged onto my  
25 account and I saw there is money listed for Pinterest. But in

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1 the end, it was an absolute 100 percent fraud. He had no  
2 shares. He had no access to shares. It was a complete fraud.

3 The next fraud that came about was that he started  
4 asking me, persistently asking about, what are you doing with  
5 your -- don't you have any cash? What are you doing with your  
6 money? Where is your IRA money? I mentioned to him that I had  
7 my IRA money with Schwab and that it was in cash. I kept it in  
8 cash. And why would I keep it in cash? Because I was scared.  
9 I actually kept it in cash. It wasn't even making any money.  
10 Because after 2008, I lost money, so I took a big portion of it  
11 and I went to cash, and I left it there as my security.

12 Well, Nick worked on me and worked on me and worked on  
13 me. And the sad part of it is, I gave him \$1.4 million. Not  
14 to him, theoretically, but to this, to the Willow Creek IRA  
15 fund. And my thinking was, I had some money with Schwab, my  
16 other investment, I would diversify a little bit. I thought he  
17 was a real guy. He told me about his returns on his  
18 investment. It seemed like a real IRA, according to his  
19 literature, and my accountant asked me -- yeah. I said that's  
20 fine. It's an IRA rollover. No problem. You can do that. He  
21 said, I don't advise it because I don't know this guy, but just  
22 make sure he's a legal custodian, make sure he's legally able  
23 to have an IRA custodial account, or else the government, when  
24 you withdraw that money, is going to take that as a cash  
25 withdrawal.

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1           And I spoke to Nick and I have in writing his  
2     response: Of course I'm a legal custodian. Of course I'm  
3     good. Of course the government lets me do this. How can I run  
4     an IRA? How can I run an IRA account without being a legal  
5     custodian? That's the next fraud.

6           He was never a legal custodian. He had no right to  
7     run an IRA. The IRA money was viewed by the government as a  
8     cash disbursal. And I had to pay another \$253,000 in tax to  
9     New York State because of that disbursal. My tax attorney took  
10    the position that it was a tax fraud loss, which is recognized  
11    by the IRS but not by New York State and New York City. So in  
12    the case it cost me another \$253,000, and that was his fraud.  
13    His fraud was that he was the IRA custodian and this was an IRA  
14    account and it wasn't. It was just nothing. He was not in any  
15    way registered, he had no right to take IRA money, and the  
16    government views it -- even though I was defrauded and it's a  
17    crime, the IRS and their attorneys and the law is, they felt  
18    sorry for me, but you still owe the money. Those were the two  
19    main frauds that were placed on me, so my total loss with him  
20    was well over \$2 million.

21           And in terms of the IRA money, that was money that I  
22    contributed to since 1983. I've been a neurosurgeon for many  
23    years. I'm 68 years old now. I started when I was 31. And  
24    every year I put \$30,000 into this account, \$30,000, \$30,000.  
25    This isn't money I made in some deal. This wasn't money I made

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1 a couple weeks ago when I sold a building and got all this  
2 money and give it to this fund. This was money that accrued  
3 over 25, 30 years of work and that because of the stock market  
4 and the way it was invested, it grew, as it should have grown.

5 And that's what he took from me. He took my life  
6 savings from me, money that was hard earned and incrementally  
7 earned. I didn't do a good deal and just put the money to him.

8 In the end, my sad story -- and I don't now how much  
9 this impacts on things, but I was recently diagnosed with  
10 cancer. I underwent -- part of reason I'm speaking this way is  
11 the left side of my face doesn't work. I had malignant cancer  
12 in my salivary glands discovered shortly after I found out  
13 about this fraud, so 2018 was not a particularly good year for  
14 me.

15 I had extensive surgery, radiation, chemotherapy at MD  
16 Anderson Cancer Center. I was out of work for six months.  
17 Luckily, this past January I was able to return part time to  
18 work. But what I can't do, I don't have a future that's going  
19 to recoup this money.

20 Unfortunately, this past December, my cancer returned.  
21 I have terminal cancer right now. It's difficult for me to be  
22 here. Yesterday I had to go to extensive treatments at Sloan  
23 Kettering. Radiation, immunotherapy. My survival is quite  
24 uncertain.

25 And in planning my estate planning, which I had to do,

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1 it's clear that \$2 million taken out of my estate, to my  
2 children and my wife my family is a big hit. It's a major part  
3 of my money. It's less for my children. It's not going to  
4 affect me. It's going to affect my family. I'm not going to  
5 be here very long.

6 But I expect from the Court and what I want from the  
7 Court is, I have no chance of recouping this money. If I was  
8 well and healthy over the next 10 years, I could probably make  
9 it back, but I'm not going make it back. It's a loss.

10 And what I'm asking from the Court is this a predator,  
11 this is a con man, this is a fraud. He took my money. He knew  
12 that the IRA money was not good. He knew that the Pinterest  
13 shares were not real. It's not a question of him losing a lot  
14 of money trading. It's a matter of him taking the money on a  
15 fraudulent basis. His credentials were completely fraudulent.  
16 He reiterated to me over and over again, when he was at Goldman  
17 Sachs, when he was at Bear Sterns. He wore a Dartmouth cap all  
18 the time.

19 This is a complete fraud and I think he should be  
20 punished as such. My goal of being here is less about getting  
21 money back, but protecting society from the predatory behavior  
22 of a man like him. I couldn't imagine a person to be this  
23 evil. It's beyond my imagination to think that someone could  
24 be so without conscious and such a sociopath and befriend  
25 people, run this con, take the money, and have no remorse

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1 nothing.

2 That's my statement. I want the government to protect  
3 the citizens of the United States from future actions of this  
4 predator. That's my goal. Thank you.

5 THE COURT: Thank you, Dr. Levine.

6 At this time I would call on Granville Beals to come  
7 forward.

8 MR. BEALS: Thank you, your Honor, and the Court for  
9 allowing me to speak. My name is Granville Aimes Beals.

10 I will be 65 in April, and I am a victim, also, of a  
11 life-altering terrible fraud inflicted upon me, my wife, and  
12 many other decent people by Nicholas Genovese, who I met nearly  
13 eight years ago on a flight to New York. He then shared with  
14 me his position as an heir to the Genovese drugstore chain  
15 family fortune, his time as a partner at Goldman Sachs, with  
16 Bear Sterns as a portfolio manager, as well as his Dartmouth  
17 college days etc., all leading up to his managing the family's  
18 fortune with his multibillion dollar hedge fund, Willow Creek  
19 Advisors.

20 He told me about his home that he had in a very tony  
21 part of Greenwich, Connecticut and his polo pony, which he had  
22 purchased in Kentucky for his sport that he so loved to watch,  
23 as well as play. He was impeccably dressed in a fine suit,  
24 Gucci shoes, Rolex watch. He certainly fit the part.

25 So what's a billionaire doing sitting next to me I

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1 asked him. Without missing a beat, he explained it was a  
2 last-minute booking that his secretary had made for him and  
3 that no first-class seats were available. It's a short  
4 connecting flight, so that seemed pretty reasonable to me. But  
5 as I would later learn, that was all just a mountain of  
6 unscrupulous deception and emotional manipulation.

7 He had law offices which are down at 1 Liberty Plaza  
8 with spectacular views of Wall Street and lots of beautifully  
9 printed pamphlets. There's a lot of stuff in here that I got  
10 suckered into. He had brochures and marketing materials  
11 extolling Willow Creek Advisors.

12 He had a private, armed, salaried driver, former NYPD,  
13 armed, sitting in his Cadillac out front waiting to whisk him  
14 around. His other cars, a Bentley and Mercedes, were primarily  
15 for his personal use. So after a long workday chances are good  
16 that he'd be driven to the Four Seasons for cocktails, where he  
17 was well known by the attentive staff, who always treated him  
18 like royalty.

19 He lived an extravagant lifestyle, which he always  
20 justified for me for all the hard work that he was doing on a  
21 daily basis to manage his clients and his family's money.

22 On his occasional business trips to California, which  
23 is where I live, he told me that he was there to meet with  
24 executives at Google and Apple about investments they were  
25 making, or had already made, with Willow Creek Advisors and to

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1 meet with his Los Angeles clients, which included the  
2 prestigious Kerkorian and Chandler families, to name a few.

3 He would always stay at the Ritz-Carlton on the VIP  
4 club level, and he would either drive himself to our house in a  
5 Maserati, or arrive in a large Suburban with his two armed  
6 off-duty LAPD security men.

7 He often told us that he was very hands on and his  
8 clients always come first. This, along with all of his other  
9 well-documented fabrications, was just a huge lie, a lie which  
10 was revealed to us on the evening of February 2, 2018, while we  
11 were parked outside of a house where we would be attending a  
12 dear friend's 60th birthday party.

13 I attempted for over a week to reach Mr. Genovese  
14 without success. I spoke to him frequently, texted him almost  
15 daily. And alarmed that I had not heard a word from him in  
16 response to the numerous messages that I had left him, I was  
17 truly quite concerned about his safety, and I thought well  
18 maybe he had been in a terrible car accident or was in the  
19 hospital.

20 So while sitting with my wife in our car, I searched  
21 the news online. And that's when I learned that he had just  
22 been apprehended and arrested in Florida by the FBI. My wife  
23 and I, we just sat that in our car just staring at each other,  
24 in a state of shock, an unfamiliar panic. It was a horrible  
25 moment where right away we felt a terrifying sense of the harsh



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1 and devastating effects this would no doubt have on our life.  
2 Our life savings from years of hard work was stolen. With that  
3 stunning revelation we went in to celebrate our friend's 60th  
4 birthday.

5 The anxiety brought on by the loss of our savings is  
6 enormous. The burden which has been placed upon us by this  
7 calculating criminal is immeasurable. Money that we thought  
8 was wisely invested and growing is gone, stolen.

9 It's hard for us not to feel like fools, even though  
10 we know well we are victims of a horrible crime. And as much  
11 as we've tried to put it behind us, this nightmare, the damage  
12 that he has inflicted upon our life makes that quite  
13 impossible. Our finances and future plans for a safe and  
14 secure retirement are shattered. It scares us to think what  
15 life's going to be like from here on out.

16 He's proven himself to be a serial thief of others'  
17 life savings. There is no remorse. There is just a  
18 hibernation period in prison, eating, sleeping and requiring  
19 public staffing, plenty of time for him to plot what's next on  
20 our dime again.

21 We were not shot with a gun. We were not stabbed with  
22 a knife. We were not bludgeoned with a hammer or a club. But  
23 make no mistake. My wife and I were stalked and attacked as  
24 were all the other good people who believed that Nicholas  
25 Genovese was a trusted financial advisor and truly caring

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1 friend with nothing but the best interests in mind for our  
2 financial well being. His despicable crimes, although  
3 bloodless, are maliciously aggressive, leaving gaping wounds  
4 that last a lifetime.

5 A disturbing example of how much he cared. Greeting  
6 cards and flowers my wife would receive from for the good news  
7 I would share about your her bimonthly checkups following the  
8 surgery and chemotherapy treatments she had gone through for  
9 ovarian cancer. It's blatantly obvious that his motivation for  
10 these kind and loving gestures had nothing whatsoever to do  
11 with any care or concern for the health and welfare of my wife.  
12 Excuse me.

13 It is a despicable example of his cunning  
14 manipulations, and I'm disgusted, as is she, by the pretense of  
15 care and concern showed to her by our, quote, friend Nicholas  
16 Genovese, when in truth he couldn't care less.

17 If that wasn't enough, she lost her job of 19 years  
18 just one week before learning that our financial caretaker is  
19 an ex con and our money's gone. His calculated plan was to  
20 take us for all he could. We were just another couple of  
21 perfectly targeted victims to exploit in the big con game that  
22 has been his sole vocation for the entirety of his adult life,  
23 one that led to numerous felony convictions for fraud-related  
24 offenses, including forgery, theft by deception, identity  
25 theft, grand larceny three times, along with time spent in

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1 prison.

2 And, still, he has not change his criminal ways. He  
3 has flagrantly broken our laws and our trust. He is not  
4 ignorant. Oh, no. He is blatantly dishonest and brutally  
5 predatory. He steals, he lies, he manipulates and, most of  
6 all, he leaves people in ruin, people who uphold our laws and  
7 believe in our civilization, people who have worked hard all of  
8 their lives, only to have him promise that he will put that  
9 hard-earned money to work while actually stealing it.

10 In February of 2017, roughly a year before Mr.  
11 Genovese was arrested, we were notified by the IRS that someone  
12 had attempted to impersonate us, using our name and social  
13 security numbers to file an early tax return, requesting that  
14 the refund be wired in an expedited manner. We've never filed  
15 early or requested an expedited return in our 29 years of  
16 filing our joint tax returns. Thankfully the IRS noticed this  
17 and contacted us first. We were victims of identity theft.  
18 Once again, we stood to lose even more of our money. Perhaps  
19 it's no coincidence that this is a felony crime for which  
20 Nicholas Genovese has previously been convicted, given what he  
21 has done to us. I think not.

22 There's not punishment enough for all the suffering  
23 that he has caused. He has proven himself to be a danger to  
24 society, whose lavish lifestyle derived from a lifetime of  
25 crime, which suits him just fine.

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1 I'm well aware that Nicholas Genovese has made a plea  
2 deal and no doubt expects to receive a sentence agreeable to  
3 him. He's a master manipulator and his manipulations have not  
4 ceased, even during his incarceration.

5 After pleading guilty, he delayed the sentencing over  
6 and over and over again, going through multiple attorneys,  
7 getting sick, needing more time, over and over again to  
8 prepare, prepare. Prepare for what? He's guilty. The  
9 numerous crimes that he has committed are plain-as-day facts,  
10 and yet his games and manipulations continue. He has dragged  
11 this out, inflicting further abuse upon his victims and upon  
12 this court.

13 I have lost count of how many times I have forfeited  
14 money for canceled tickets that I have purchased for flights to  
15 attend this sentencing. I submit he was just employing one of  
16 the many techniques in his playbook, counting on victims, such  
17 as myself, who have gone out of their way to speak in court to  
18 become so frustrated that they finally give up and decide not  
19 to appear for this sentencing.

20 He may not be too worried. Well, I am. I am worried  
21 that my retirement years, which are just around the corner,  
22 will be fraught with financial insecurity. I'm worried that  
23 our healthcare expenses might be unaffordable when we need it  
24 most. I worry about things I never would have worried about  
25 were it not for Nicholas Genovese.

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1 Well, I have a plea too. And that plea is that  
2 Nicholas Genovese be given a sentence that meets, at the very  
3 least, a maximum allowed by the guideline set forth for the  
4 plea that he agreed to. I plea for more, in fact. He stole  
5 freedom from our retirement years. Why should he someday be  
6 free to enjoy his life. May he never experience true freedom  
7 again and may he forever be prevented from bringing harm to  
8 another individual. He does not deserve anything from this  
9 community. It is the community that deserves protection from  
10 him.

11 Thank you, your Honor.

12 THE COURT: Thank you, Mr. Beals.

13 I call now on Mr. Orley to come forward.

14 MR. ORLEY: Thank you. My name is Geoff Orley.

15 I find no reason to repeat what the prior two victims  
16 have already said. I can't agree more. I was a little  
17 dismayed that the proposed sentencing guidelines were only 10  
18 to 13 years, which was a surprisingly light sentence to me.

19 On the other hand, I have been in court now in the  
20 civil court trying to find a way to recover some of my  
21 hard-earned monies and, unfortunately, there's nothing to  
22 recover from Mr. Genovese. I'm trying to win a suit against  
23 his attorney, Mr. Schiavetta, who the Court acknowledged did  
24 have scienter, but I now need to prove that Mr. Genovese had  
25 funds in the account at the time of the fraud.

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1           And because of the grand jury and other reasons, I've  
2       been unable to attain paperwork to help prove that the funds  
3       were in the account, so I have a potential opportunity maybe to  
4       recover something in a civil court. His attorney did mention  
5       they had paperwork, maybe it can help me. I don't know if  
6       there is something that can help.

7           But I can say that I tried to have a personal  
8       relationship with Nick. We had a personal relationship. He  
9       went with me on a trip to South America. And as we were riding  
10      horses he was talking about all of the funds he was making on  
11      the telephone up in the mountains to his attorney or his other  
12      partner in crime that I could just hear enough to salivate and  
13      be excited about the opportunities that he was creating.

14          But, unfortunately, I was duped like the others. I  
15      was also naive. My MBA son doesn't even want to talk to me  
16      anymore. He doesn't trust in my judgment.

17          And, unfortunately, I introduced Nick to my family, to  
18      my friends. He slept in my house. And outside of the loss in  
19      Willow creek, I advanced monies for us to take a fishing trip  
20      together in the Amazon, which to this date he never paid for  
21      and I had to pay for out of my pocket and never took the trip,  
22      in addition to the loss in Willow creek.

23          Everything was a lie. Everything was a fraud,  
24      everything, including going to see his horses out in Greenwich  
25      with the sign over his booth at center court, and,

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1 unfortunately, it was all bullshit. The restaurant that we  
2 celebrated his birthday in, knew the matricide and everybody  
3 knew him and knew his mother and knew this and that, and I was  
4 just another naive victim that he took advantage of.

5 I'm hoping I might have a recovery in the civil court,  
6 but I'm not too optimistic, and I only ask the judge to do what  
7 he thinks is correct. But Nick should not be out on the  
8 streets with an opportunity to go after more people. I know he  
9 likes pinstriped suits and I see he's not wearing one today.  
10 Maybe he'll never get to wear one, I hope not, unless that's  
11 the order of the prison.

12 So thank you for your time, and he deserves everything  
13 he's got coming.

14 THE COURT: All right. Thank you Mr. Orley.

15 I now call on Mr. Blank to come forward.

16 MR. BLANK: Thank you for this opportunity allowing me  
17 to read my statement.

18 THE COURT: Would you just state your full name for  
19 the record.

20 MR. BLANK: Aaron David Blank.

21 THE COURT: Thank you.

22 MR. BLANK: What my fellow victims have said, it pales  
23 in what I have to say here, so I'm going to cut to the chase a  
24 little bit.

25 This is what I have to show for my grandfather,

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1 working almost to his dying day and giving me a meager  
2 inheritance that was then swindled away from me by a  
3 fast-talking con man.

4 It breaks my heart more that he also most probably  
5 defrauded my most favorite institution, the Metropolitan Opera.  
6 And more disgusting, I am very certain he used those funds to  
7 hire prostitutes, which breaks my heart and my family's legacy.

8 This whole affair has made me extremely distrustful of  
9 everyone. I've suffered from a great depression from it. I  
10 ask to you please exercise no leniency.

11 Thank you.

12 THE COURT: Thank you, Mr. Blank.

13 Are there any other victims in the courtroom who wish  
14 to come forward and address the Court?

15 MR. ENZER: No.

16 THE COURT: Seeing no one coming to their feet, I'll  
17 turn now, Mr. Eisemann, to you. Do you want to be heard?

18 MR. EISEMANN: I do. Can I have just a minute to look  
19 at -- my client has made some notes while the victims were  
20 talking.

21 THE COURT: Take a moment.

22 MR. EISEMANN: Thank you, your Honor.

23 First, just as a housekeeping matter, I have the  
24 signature page of Mr. Genovese's letter to your Honor, which  
25 I'm going to hand up to you.



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1 THE COURT: That's fine. But please take the podium  
2 in addressing the Court.

3 MR. EISEMANN: I'm going to start with reacting to the  
4 painful statements that you just heard from the victims.

5 I mean, there is no getting away from the fact that  
6 this crime, like every economic crime, is painful and tragic.  
7 And when I hear something like Dr. Levine's diagnosis and think  
8 that he has to go through this while he's going through that,  
9 and the other problems that people talk about -- and I do want  
10 to address some of that on the merits.

11 But their anger and their sense of betrayal is  
12 understandable. This was their friend. And despite the  
13 suspicion, the understandable suspicions that it seems like  
14 that's all part of the manipulation, Mr. Genovese has written  
15 your Honor about how these were real friendships to him, and  
16 you have a report that talks about how this filled a need in  
17 him.

18 So it's a complicated situation. If I were in the  
19 victims' shoes, I would be saying just what they said. I  
20 wouldn't expect them to try to take a broader view, which is  
21 obviously your Honor's responsibility here because you are not  
22 just going to go by what the victims say. Otherwise, everyone  
23 would go to jail forever.

24 Mr. Genovese, as one of the speakers noted, didn't  
25 hurt anyone and, obviously, there has to be some measured

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1 sentence because your Honor sentences not just people who  
2 affected the victims in this case, but across all spectrums of  
3 the crimes that come before a federal judge, and there are  
4 norms that have developed out there as well, and I briefed your  
5 Honor somewhat on that. I'll talk about that.

6 But it's difficult. I won't envy your Honor sitting  
7 in the position if you decide that under the guidelines and  
8 just the legal analysis that you have before you that something  
9 less than the guidelines is warranted. It's not going to be  
10 easy to do that with the victims here, who don't fully  
11 understand why you might do that, but, obviously, that's your  
12 job and that's the responsibility that's given to you as an  
13 Article III judge with lifetime tenure. You have to make those  
14 judgments.

15 And anyone who is a judge or wants to be a judge knows  
16 that people are always going to be angry when they leave the  
17 courtroom if they didn't win, if they didn't get what they  
18 expected; but, hopefully, with your Honor's explanation and  
19 hearing my presentation, will at least let the people who have  
20 been betrayed understand that there is a another side to the  
21 person before your Honor. I am not taking away from what he  
22 did, but the guidelines recommend a certain sentence. They are  
23 mechanical. They are criticized. People who have stolen far  
24 more got lower sentences, so your Honor has to fit this case in  
25 with the matrix of all the cases that are out there and not

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1 just react to what is heartfelt, painful to listen to, and,  
2 frankly, difficult for me to respond to the statements from the  
3 victims.

4 I will comment on them to get it out of the way, and  
5 I'm not sure that any victim will be happy with the  
6 countervailing facts I'm trying to put on the table, but it's  
7 my job and I'm going to do that.

8 When Dr. Levine was talking -- well, just generally,  
9 there is no excuse -- I'm going to say this many times,  
10 probably -- for the untruths that Mr. Genovese told these  
11 people to get them to invest. My memorandum, the submissions  
12 I've made, the letter from Mr. Genovese, make clear something  
13 which I don't think anyone can refute, and that is that he did  
14 that as -- in his mind it was a threshold issue, and then he  
15 thought he would make money. He didn't make money. But he  
16 didn't intend to steal their money. They feel that way. I  
17 understand it. But the objective facts are that he invested  
18 the money. Maybe he didn't do it very well. Maybe there are  
19 other people who could have done better, but he did invest and  
20 that's a mitigating factor that your Honor has to consider, as  
21 I briefed in my submissions.

22 It's not as if he's a person who -- people lost \$11.2  
23 million, the loss figure here -- because he said, how can I get  
24 that money into my pocket so I can have \$11.2 million. He  
25 didn't do that. He said, how could I get \$11.2 million so I

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1 can invest it because I think -- and there's a lot of support  
2 for why he thought that way -- I think I'm a talented investor,  
3 and I'll make them money -- because I'm leveraging other  
4 people's money, I'll make money as well.

5 He lost it all. Other hedge funds went belly up. I  
6 have the names of them. Maybe other hedge funds wouldn't have  
7 gone belly up. But to the victims who feel betrayed, if your  
8 Honor does, to a more measured approach under the guidelines,  
9 by talking to your Honor, I want them to understand that as  
10 well that there is a difference between -- as bad as what Mr.  
11 Genovese did, a difference between someone who said, and there  
12 are many of them and your Honor has sentenced them, who started  
13 from the getgo to say how can I fleece these people and put it  
14 in my pocket. He didn't do that. He put some in his pocket.  
15 He lived a higher lifestyle than he should have, but he didn't  
16 start out to do that.

17 Just in the order of my notes, Mr. Beals saying that  
18 he felt that Mr. Genovese wasn't a caring friend. With all due  
19 respect, he doesn't know whether that's a case or not.  
20 Perfectly reasonable assumption for him to make. It was all  
21 part of a manipulation. I don't think your Honor is going to  
22 be able to resolve that.

23 You have Mr. Genovese's letter talking about how he  
24 feels pained by what he did to people who were his friends. I  
25 think we have to leave it at that, that there are two sides to

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1 the story.

2 But because he invested money, I think you can't make  
3 the leap of logic to say that everything he did, all the  
4 friendship he showed, all the times they had together that they  
5 felt warmth with each other it was all a betrayal -- sorry --  
6 it was all a manipulation. I just don't think anybody knows  
7 that. The only person that really knows that is Mr. Genovese.  
8 But there is objective evidence showing that his statements  
9 that it wasn't like that are backed up by the record of him  
10 trading and how he has talked in his heartfelt letter about the  
11 impact he feels about what he did.

12 By the way, Mr. Beals, I just would like to tell him  
13 something through your Honor. The canceled sentencing  
14 hearings, at least on my watch, were not done by any  
15 instructions by Mr. Genovese. That's my own workload and what  
16 I had to do. The last time we adjourned the sentence I  
17 learned -- only when I was making the 11th-hour request to  
18 adjourn it, that's when I learned that victims were coming in  
19 here to speak.

20 And if your Honor remembers, at that hearing I said I  
21 will make this a firm date. I don't want to inconvenience the  
22 victims. I will try to look into whether they could actually  
23 be compensated by the victim funds for the cost of their  
24 airfare.

25 But to Mr. Beals I want you to know -- I am not going

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1 to turn around and face him, because I can only speak to your  
2 Honor -- that that was on me and not on my client, and I  
3 apologize to the extent you had to do that. For my time I  
4 don't know the answers, but most adjournments are done because  
5 lawyers need them, not because the clients are asking for the  
6 lawyers to get them.

7 Mr. Orley says that when they took a trip to Colombia  
8 that Mr. Genovese was talking about the money he was making  
9 while he was on top of a mountain. Your Honor knows -- I  
10 didn't give you all the records going back, but there were  
11 times when he was making money, and he made some very good  
12 deals. He turned \$50,000, \$51,000 into about \$600,000 in a  
13 matter of days.

14 So, again, it's one of these things we don't know. I  
15 could go back forensically and reconstruct the date of the trip  
16 and say that, look, he did actually make money there, but he  
17 was actually working this fund. Despite how he got the money  
18 to invest, he was working the fund with analysts, with reports,  
19 with keeping up with news, keeping up with social media. They  
20 developed algorithms to be able to pick their stocks.

21 They did not work out for sure, but it's just a little  
22 bridge too far to say that everything he did was a concoction,  
23 because it wasn't, and the record establishes that.

24 So justifiable anger should go as far as the  
25 justifiable anger is deserved, and it's well deserved because

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1 the impact of this is that they've lost their money. And who  
2 cares whether Mr. Genovese thought he was going to make money  
3 or not. To them they lost their money, and they are going to  
4 bring that to your Honor's attention and talk about how painful  
5 it is, and there is no doubt about it.

6 That's why Mr. Genovese is going to go to jail and not  
7 walk out a free man, as somebody who nobody lost money on might  
8 do, or as someone who had a much lower degree of crime will do.  
9 But he won't spend the rest of his life in prison, as someone  
10 who has murdered people have done or who ran a huge drug ring  
11 and probably resulted in deaths of many people. There is a  
12 continuum, and he is in the continuum, but only at a certain  
13 level.

14 All of the investors signed -- all of them talk about  
15 the impact of losing money, and there is no doubt that losing a  
16 million or \$2 million is painful, unless you are Mike  
17 Bloomberg. To anybody who has got a modest amount of money  
18 it's painful.

19 But all of them did sign subscription agreements that  
20 said -- it looks like boiler plate, but it means something --  
21 that the fund has no track record, that they need to be  
22 prepared to lose their money. There are regulations that  
23 determine who can invest in a hedge fund and that's what goes  
24 into these subscription agreements that say you got to have at  
25 least X amount of income, this much assets. I may have

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1 reached, your Honor, on the numbers, but if not, it's in the  
2 regulations. You have to be a qualified investor, one who  
3 acknowledges that you can lose the money.

4 Certainly, nobody agrees to lose money because of  
5 deception. But to the extent that any of the victims here are  
6 testifying that this has made an impact on their life, again,  
7 I'm not saying it doesn't make an impact.

8 But to the extent that other information I have or  
9 things that people wrote in subscription agreements or  
10 information that was provided to Mr. Genovese, like Dr. Levine  
11 who had -- I'm told that he had a townhouse worth \$10 million  
12 in Tribeca, or maybe more than that. I don't know what has  
13 happened to that. Maybe that's been spent since he got sick.

14 But at the time he invested he had assets that were  
15 sufficient. He represented -- and to some extent it was  
16 corroborated -- to be able to take a loss like this. So to the  
17 extent that it's affecting their lives now, that may have  
18 happened between the time of their investment and now that they  
19 are in worse positions.

20 But if you look at it from my client's perspective,  
21 when he's taking money, if there's a person who came and said,  
22 this all my retirement savings, maybe he wouldn't have taken it  
23 because the regulations didn't allow it. Maybe he would have  
24 treated those funds differently and put them in a safer  
25 investment. But all these people said, essentially, that they



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1 were, for lack of a better word, high rollers who can afford  
2 the risk. They took the risk and they lost their money. I  
3 just wanted to bring that to your Honor's attention.

4 The Pinterest shares that Mr. Orley, I think, talked  
5 about.

6 MR. LEVINE: Levine.

7 MR. EISEMANN: That Dr. Levine talked about.

8 He said that they were never there. It's not the  
9 information that I have. And, again, I couldn't tell you  
10 what's right or not because I haven't looked at it. But,  
11 according to my client, that offer was withdrawn. Probably had  
12 the same impact whether they were never there or they were  
13 withdrawn, but it's a little bit less culpable if that's the  
14 way it happened.

15 On the IRA, it's a very bad result that he had to pay  
16 the taxes on that, the city or state taxes, whichever one he  
17 had to pay. My understanding is that Mr. Genovese researched  
18 it, felt because Dr. Levine administered his own IRA that he  
19 had the power to put it into this fund and it would still be  
20 covered.

21 I don't know what the research showed. And who cares  
22 if you are Dr. Levine because the fact is that it wasn't  
23 supported by the research. But to the extent that Mr. Genovese  
24 rationalized taking it, he certainly made statements that were  
25 overblown from what he had done, but there is a kernel of

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1 justification in his mind for doing that, and it's only a  
2 kernel because it doesn't justify the result that Dr. Levine  
3 experienced.

4 The Maserati that Mr. Genovese rented, he told me he  
5 rented that. He didn't own it. It doesn't appear in any of  
6 the assets in the presentence report about what he owns. He  
7 rented that a couple of times. I'm sure a lot of it was show.  
8 That's part of being a hedge fund manager, that you want to  
9 show that you are successful. I don't know how much it cost,  
10 but I don't think it was a substantial amount of money that  
11 went into renting that on a couple of occasions.

12 Mr. Beals at one point represented that he owned his  
13 house free and clear and had other assets that his wife had  
14 cashed out of her company. Again, I don't know the situation  
15 today, but at the time that Mr. Genovese took the money, or  
16 while he had the money, that was his understanding.

17 With respect to the Orleys -- and I know Mr. Orley has  
18 written this in his letter and has acknowledged it when he  
19 stood here -- they are suing -- when you're doing what the  
20 Orleys are doing, which is to try to recoup your losses, you  
21 look for the deep pocket. And one of the deep pockets that I  
22 know by speaking to their counsel is perhaps the malpractice  
23 policy of Schiavetta, who was the lawyer who worked with Mr.  
24 Genovese, maybe the partners of the law firm that he was in at  
25 the time.

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1           And so it's important for Mr. Genovese to help, and I  
2     have been helping, as prior counsel helped, Mr. Orley to try to  
3     recoup his losses. There is no money in Mr. Genovese's pocket  
4     that he can come into and just give to Mr. Orley, but he can do  
5     what he can do, which he tried to do with his cooperation with  
6     the government on the criminal side, is to give as much  
7     information as he can about Mr. Schiavetta, the lawyer  
8     Schiavetta. I just spoke to his lawyer yesterday to try and  
9     get more information, and I had provided that information to  
10    them. Hopefully that will help. It's something. It's not  
11    everything, but it's something to try to recoup the losses.

12           That and the efforts that Mr. Genovese made to  
13    cooperate with respect to Mr. Schiavetta is worth factoring in,  
14    with all due respect. It is an effort he's making to make good  
15    on it. And the fact that the Orley's brother's lawyer doesn't  
16    face Rule 11 sanctions for making a case against the lawyer  
17    Schiavetta indicates that there is a basis to say that he was  
18    involved in it, and so we are doing our best to try to help on  
19    that front.

20           By the way, I'm told by my client right here that the  
21    trip to Colombia with Dr. Levine -- I forget -- with Mr. Orley  
22    was \$500, that my client hadn't paid, but it's \$500 that -- he  
23    didn't mention the amount when he spoke. My understanding, it  
24    was a small amount. I just don't want it to be left  
25    unaddressed that it was some large amount of money that he owed

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1 for the trip. And if that's wrong, I apologize. That's my  
2 client's recollection of that.

3 I think I have addressed what I wanted to say to the  
4 victims on my own behalf and on behalf of Mr. Genovese.

5 Your Honor, turning to the more general arguments that  
6 I wanted to make -- I'm sorry. I'll make one other statement.  
7 There's another person in the room who is affected by this.  
8 Not just Mr. Genovese, who faces the loss of his liberty for an  
9 extended period of time, but his mother, who, as in all these  
10 offenses, especially when it comes to someone losing their  
11 life, everyone's family is affected by this.

12 So his mother, Mr. Genovese is the one that she's  
13 closest to, the one who provides her the most support. She's  
14 afraid of losing her son for a long period of time. That's an  
15 impact, as well as the impact on the victims.

16 Your Honor, as the judge, is going to take that into  
17 account as well and it is a very big thing. She flew all the  
18 way from Chicago. She is 75. Seventy-five may be the new 55,  
19 but she flew here all the way from Chicago to be with her son  
20 to show her support and to let your Honor that she cares about  
21 him. She's disappointed in what he did, of course, but she  
22 cares about him. And if he goes away for longer than I think  
23 the case warrants, that's another person who it will be a  
24 tragedy on.

25 I'm just going to go back over some of the history and

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1 circumstances which I did not put in the letter. This was  
2 mostly new information. I may touch on other aspects of it.

3 My client worked for a number of years. It is easy to  
4 look at someone like Mr. Genovese and look at his criminal  
5 record, and your eyes start to glaze over if you see a number  
6 of priors and you don't pay strict attention to the years.

7 But there was a period of time from 2007 -- from the  
8 mid 2000s to the time he was arrested that he wasn't in classic  
9 trouble. I know that he committed this offense. It was in an  
10 effort to try to make a living at something he had been doing  
11 on his own. He had been trading on his own since he was 18  
12 years old. He had some success in it. He had success in his  
13 hedge fund. When hedge funds started to get bigger as a result  
14 of Dodd-Frank being passed, that made it more advantageous from  
15 a tech standpoint.

16 THE COURT: I've got to interrupt you for a moment.  
17 You made this point in your letter submission as well, that he  
18 was doing things that were productive from the mid 2000s, yet  
19 he was extradited from Florida in the spring of 2005 to face  
20 charges here in New York that had been lodged against him in  
21 the spring of 2004, and he pled guilty and was sentenced to  
22 three to six years in prison. That was on August 5, 2005.

23 So I just can't square your observation that he was  
24 leading a productive life in the mid 2000s with his criminal  
25 history.

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1 MR. EISEMANN: I'll try and see when he was released  
2 from that sentence. If you will give me a moment.

3 THE COURT: July 31, 2007.

4 MR. EISEMANN: Right. The point I was making was from  
5 2007 to 2017, that period once he got out, that he was trying.  
6 It's tough with a criminal record to make the kind of progress  
7 in your employment front. My point is, I don't want to  
8 collapse that 10-year period and lose it and say, well, he did  
9 something bad in a decade that begins with two zero and we are  
10 at another decade beginning with two zero, so he has just had  
11 an endless string of criminal behavior.

12 As you get older you have to find other ways to  
13 support yourself. He didn't just support himself through  
14 criminal things. He was working. He had a variety of jobs.  
15 He was working at O'Hare Airport at one point. He was a person  
16 who was responsible when they were building terminal 5 at  
17 O'Hare to put together a database.

18 THE COURT: Where is that in the presentence report?

19 MR. EISEMANN: I know it's not there. I wasn't there  
20 during the interview. This actually was when he was working as  
21 a freelance database designer, so for himself. So he wasn't  
22 really employed.

23 But for a year and a half he was, through a temp  
24 agency, assigned to help build this terminal at the airport,  
25 help in terms of, he was the person who ran the punch list so

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1 that when contractors said, I've completed this work, I need to  
2 get paid, they would have to go through Mr. Genovese to make  
3 sure that the database reflected that that particular work they  
4 did was performed before they were paid.

5 So it's not like he was out there. I know it's not in  
6 the presentence report. I wasn't present during the interview,  
7 so I don't know what question was asked, why this was missed,  
8 but he did that for a year and a half.

9 So he was trying to make money legitimately. And when  
10 he was trading on his own he was making money legitimately on  
11 his own, and he saw this as a way to bring himself beyond the  
12 sort of 60, \$80,000 a year he might make as a day trader to be  
13 very successful, and he took a shortcut, a tragically terrible  
14 shortcut, but that's what he what doing, pursuing something he  
15 thought was going to be a legitimate way to make money, cutting  
16 some very bad corners along the way.

17 I'm trying to make the point that he's not been a  
18 person who has just been in and out of jail constantly and this  
19 is just but the latest episode. It is more nuanced than that.  
20 He was trying.

21 You've got letters saying he's a caring person. He  
22 went back and lived at home to take care of his father when he  
23 had cancer. Any child would do -- not any child. Some kids  
24 wouldn't do that. But he did that, took care of his father.  
25 Supported his mother.

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1           You can't fault him for wanting to turn his life  
2 around and live the American dream. But you can fault him for  
3 making some selfish decisions to say he was going to lie about  
4 his background to be able to do that. If he didn't make those  
5 statements, he's entitled to try and he's entitled to fail.  
6 It's not a crime to fail in a hedge fund. It is a crime to lie  
7 to get the money to be put into it, and he did that.

8           He was laid off. He was working at -- during that  
9 freelance period he worked as a programmer at something called  
10 the Harlan School for the Arts in Chicago, and he tracked  
11 student records of what classes they took. He was in charge of  
12 that database. Again, I think that's when he was a freelancer.

13           He worked for the company. So if that's not in the  
14 presentence report --

15           THE COURT: Actually, that is in the presentence  
16 report. From 2007 to 2008 and it characterizes his work hours  
17 as "irregular."

18           MR. EISEMANN: I hope your Honor is not assuming that  
19 means that he was supposed to be regular, but, in fact, he was  
20 only irregular. To me it suggests that it was a part-time  
21 thing that didn't require him to be there all the time. We  
22 don't know anything other than what's in the narrative.

23           THE COURT: It's a narrative that he provided to  
24 probation.

25           MR. EISEMANN: But irregular would be his own



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1 statement to them that it was irregular hours, not that it was  
2 40 hours a week. I think it would be wrong to read into that  
3 that somehow he was remiss in his work and it shows that he has  
4 a spotty record because he worked at a job that required  
5 regular hours.

6 THE COURT: No. In other jobs he was perfectly  
7 capable of reporting that he worked 40 hours a week. Irregular  
8 means something far less to me than 40 hours a week, and he  
9 couldn't remember what his compensation was.

10 MR. EISEMANN: He tells me it was part time three days  
11 a week.

12 THE COURT: There you go.

13 MR. EISEMANN: Your Honor, there's enough here for you  
14 to factor in and to draw an inference that I think is not a  
15 warranted one, since it came from my client himself during his  
16 interview, to say that he worked irregular hours three days a  
17 week. Maybe that's the probation officer's --

18 THE COURT: The only reason I raise it, and it's a  
19 minor point and let's move on, is that you were suggesting that  
20 to say it's irregular, Judge, means, oh, it's 40 hours but not  
21 at regular times.

22 MR. EISEMANN: I didn't mean to say that.

23 THE COURT: That's the inference you were asking me to  
24 draw. I don't draw that inference, and the defendant has just  
25 confirmed why I would be wrong to draw that inference because

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1 he only worked two days a week.

2 MR. EISEMANN: Three.

3 THE COURT: Three. I wish I could get a job like  
4 that.

5 MR. EISEMANN: I must have misspoken because --

6 THE COURT: Move on, please. You are chopping a lot  
7 of chicken liver.

8 MR. EISEMANN: OK.

9 When he did get into the business here, he had studied  
10 options in college, taking classes in it. Brokerage houses  
11 gave tutorials in it. He had traded on his own coffee, soy  
12 beans, Swiss francs, and yen in options and equities.

13 The emails that are in the possession of the defense  
14 have screenshots of Bloomberg information screens with stocks  
15 on them and analysis of that. There were PowerPoint analysis  
16 put together by his company --

17 THE COURT: I've got to interrupt you again. I'm  
18 sorry. But there has to be a good-faith basis for you to make  
19 the argument that you just made that he studied options and  
20 finance in college.

21 First, you submitted his transcript from the Community  
22 College district number 508 in Chicago, which he did not  
23 complete a degree. And when I look at his grades, they are  
24 largely Ds, incompletes. Econ 1, he withdrew. Econ 2, he got  
25 a D. So please don't stand here and tell me that he studied

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1 finance in college. The only course he seems to have done well  
2 in was in his first semester for one credit called career  
3 planning. Wow. I wonder what that course was about.

4 MR. EISEMANN: Then, your Honor, let's just look at  
5 the proof. I've given examples of the trades he did. Options  
6 are not for the faint of heart, and he had some very big  
7 successes. He had others I didn't put in there.

8 The investors here will know about something called an  
9 Alibaba, I think, that he made over a million dollars, and he  
10 invested a hundred thousand dollars in late 2014. Held options  
11 for two weeks. They rose from a dollar to about the price of  
12 \$19 and made a lot of money.

13 So whether it was acquired through formal education or  
14 watching brokerage things, or maybe I weighted too much what he  
15 did in college, he had enough knowledge to be able to do this.

16 The only point I'm trying to make, and maybe I'm  
17 making this harder for myself, is to say that he was trying and  
18 he often succeeded but he often failed. I guess I'll leave it  
19 at that. I don't need to give more than I put in the  
20 memorandum about that.

21 I've given you other cases, your Honor, where there  
22 are other losses much, much higher than this where the  
23 defendants received lower sentences than the guidelines  
24 recommends hear. All of them involved either a variance or a  
25 departure from the guidelines.

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1           One of the things your Honor has to consider is, TO  
2           what extent did Mr. Genovese loot his own company for his own  
3           benefit? The most aggressive figure, the SEC says is \$200,000.  
4           The most aggressive figure I could come up with, and that is  
5           drawing all inferences against Mr. Genovese, this is on page 16  
6           of my main sentencing submission, is about a million dollars.

7           I think that 400,000 of that is probably legitimately  
8           charged to the business expenses and entertaining clients. He  
9           may have done it lavishly, but there is an argument that they  
10          can be deductible in taxes. Maybe it is closer to 600,000, but  
11          it is certainly nowhere near the tens millions of dollars that  
12          people usurp for themselves in the cases I cited for your  
13          Honor. That is a mitigating factor because if he were a thief,  
14          he would have taken it all from the get-go because he was  
15          trying -- he lost a lot, but of the losses, maybe, at most,  
16          10 percent of the losses went into his own pocket. 90 percent  
17          of his losses were just through his efforts to trade that  
18          didn't work.

19          I'd like to turn just to the comparable cases, your  
20          Honor, unless you have questions about them. I understand  
21          every case as --

22                THE COURT: Every case requires an individualized  
23                assessment, doesn't it?

24                MR. EISEMANN: I understand. But every case, the  
25                rigidity of the guidelines and the overly formulaic way that

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1 they operate and the mounting of various adjustments in there  
2 has no empirical evidence.

3 And like the defendant or not, it is your job, as a  
4 judge who's passing judgment on him, to say when you start the  
5 guidelines, as you should as the starting point, to say, now,  
6 under the Supreme Court line of cases to say, am I satisfied  
7 that that really reflects the punishment someone like that  
8 should get. If I couldn't make that argument I couldn't ask  
9 your Honor to go below the guidelines.

10 But you could personally despise Mr. Genovese. And if  
11 the guidelines still say that his sentence should be 70 months,  
12 for instance, and that's the heartland that you work from, you  
13 would do it because you would say, I don't like what he did, I  
14 find it painful. And if you're the victims, it's painful. But  
15 if the guidelines said that is the heartland, that would be  
16 your starting point.

17 My submission is geared towards telling you that the  
18 heartland should be around the five, six, seven-year range and  
19 not the 10-year range that the guidelines choose their  
20 application of, including one adjustment that I disagree with  
21 philosophically. Without that, you're in that range.

22 So the application of this one adjustment, for  
23 example, investment advisor adjustment, I think this is a case  
24 where over time, if it is litigated -- maybe your Honor felt we  
25 had to write on this to help advance it -- in time I think

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1 there is going to be this argument that I have developed that  
2 may come to the forefront, and that is that investment advisor  
3 is construed broadly in the civil context and in the civil  
4 enforcement context, but the sentencing commission is just  
5 putting in a definition section that investment advisor under  
6 these guidelines has the same definition as it has under the  
7 Investment Advisors Act, that is just nothing to support that  
8 it should be read that way and it doesn't serve the purposes to  
9 read it broadly here. In fact, it jacks the sentence up by  
10 50 percent to read it that way.

11 Again, it's understandable if you find Mr. Genovese's  
12 offenses to be unforgivable and yet still -- I'm just asking  
13 you not to be whipsawed by the guidelines, use of a four-point  
14 adjustment that I believe logically doesn't apply and shouldn't  
15 apply because it doesn't fit the definition except for the fact  
16 there are some cases construing it broadly in other contexts  
17 without any analysis. It's just been adopted by a couple of  
18 courts in here.

19 Mr. Genovese, for all he's done wrong, no one should  
20 be subjected to what he's been subjected to in his time at the  
21 local federal jails, and some of this is known. I just want to  
22 highlight some things which I didn't put in in detail in the  
23 letter. I didn't want to gild the lily, but I think I would  
24 like to gild it a little bit here and go over the impact that  
25 those things had on him.

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1           He was part of the blackout at the MDC where the  
2           temperature was down as low as 13 degrees. There was no  
3           ventilation for 10 days or so at that temperature. Fans were  
4           still blowing without heat. The officers wouldn't let them  
5           turn off the fans. They wouldn't let them block the vents.

6           So they would be in their cells with nothing but their  
7           own body warmth for that period of time. He was given cold  
8           sandwiches. And maybe to the victims that feels like justice  
9           served, but that's not the way our society works. Only cold  
10          sandwiches. No liquids, no juice, no milk at breakfast, no  
11          bottles of water. They had to drink out of the sinks that had  
12          freezing cold water coming out of them.

13          After the blackout ended, by the way, they still  
14          didn't get bottled water for about another a week or 10 days.  
15          There was rusty water coming out of the taps, and they had to  
16          drink that. It was inhumane.

17          They didn't have any extra blankets. Mayor de Blasio  
18          arranged to have blankets brought to the jail, and the warden  
19          turned them away. And only through pressure by Mayor de Blasio  
20          did any of the inmates -- not just Mr. Genovese, but others --  
21          get those.

22          They didn't get hot water, and they haven't had hot  
23          water even since, except maybe once a week. Maybe nine out of  
24          10 showers they have to take are cold, and once in a while they  
25          get warm water, and right now the water is scalding hot.

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1           It's not a well-run institution and it's not receptive  
2 to the problems that the inmates have unless the inmates  
3 somehow make it into a court where the judge takes personal  
4 interest in this, or maybe Judge Irizarry of the Eastern  
5 District or the Federal Defenders makes a bigger issue of it  
6 than they made of the blackout. It's a very difficult  
7 existence to be there.

8           There are frequent lockdowns out there at the MDC,  
9 where he is right now. The jails are fairly air tight. So  
10 they turn off the ventilation because if there is something  
11 involving noxious odors that's part of an incident on another  
12 floor, they'll turn off the ventilation so nobody gets it, so  
13 the lockdowns lasts for hours. I know because I have waited to  
14 see somebody at the jail for hours. They forget to turn the  
15 ventilation on afterwards. You have inmates locked in their  
16 cells that have black mold in the cells, with no ventilation,  
17 for hours and hours, and those lockdowns are becoming more  
18 frequent.

19           There's no razors being handed out for the last three  
20 months. Inmates can only buy them through commissary. Not  
21 everybody can afford to do that through the commissary. They  
22 are supposed to do that and give soap and shampoos every two  
23 months, but they're not doing that.

24           He's part of the lawsuit about what happened at the  
25 MDC in the blackout, and you're not allowed to be part of that



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1 lawsuit, they won't take you unless you have an actual injury.

2 So Mr. Genovese had an injury from there. He has  
3 asthma. He came into it. He was at the MDC and the MCC. They  
4 both have black mold growing. It's a perennial problem there.

5 During the blackout my client developed a fever of 103  
6 degrees. He was shivering from the cold. He was shivering  
7 from his fever, and they couldn't do anything about it. They  
8 wouldn't and they couldn't do anything about that. So he ended  
9 up getting full-blown pneumonia. He got x-rayed for that  
10 pneumonia. The x-ray showed calcified growth in his lung. It  
11 is not because of the pneumonia, but they happened to see it  
12 and it's been -- the blackout was over a year ago, two years  
13 ago at this point, and nothing has been done about that. He  
14 may have a growing cancer in him. I don't have to preach to  
15 your Honor about the terrible medical care that you get in both  
16 the institutions, but that is not what we want as a free  
17 society to do.

18 He has a torn ACL ligament that has not been treated  
19 for the whole time he's been there. He came in there with it.  
20 Finally, after nine months of having to climb up to the top  
21 bunk, they finally gave him a pass to be on the bottom bunk.  
22 It's just an example of the sort of callousness that the  
23 institutions have.

24 At the MCC there is rat feces there. They have to  
25 live in that. They can't control the rat problem. There is

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1 mold everywhere. He was on 11 south. It had black mold. No  
2 vents.

3 The union officers, even at the MCC, sued the Bureau  
4 of Prisons because of the lack of ventilation because they have  
5 to work in the same environment. There are cockroaches  
6 swarming around there. There is ventilation in one unit. He  
7 was talking about 5 south that had ventilation, but no air  
8 conditioning, so it became sweltering hot.

9 I know your Honor has followed the cases that have  
10 come out of this, and I know you are aware that judges have  
11 granted some sort of consideration, a variance to account for  
12 the horror that all these people went through. They are  
13 captive, they can't leave, and I submit to you that is your  
14 role as a judge looking at the bigger picture. You should take  
15 that into account. Obviously, it's your call.

16 Can I have just a moment with my client?

17 THE COURT: A moment.

18 MR. EISEMANN: I just want to note initially that only  
19 has Mr. Genovese worked with the victims, or at least with the  
20 Orleys, counsel for the Orleys. He's available to work with  
21 anyone else. He has agreed to forfeiting property to help make  
22 restitution.

23 At the time of his initial presentment here in the  
24 Southern District of New York, he actually got bail set, and it  
25 would have required his mother to sign a \$500,000 personal

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1 recognizance bond and probably pledged his property. I don't  
2 know. He decided to stay in and he told his counsel, it was  
3 Federal Defenders at that point, that he wasn't going to put  
4 his mother through it. I understand that the government had  
5 thoughts of maybe appealing that bail decision, but it's my  
6 understanding, because I did get this second hand, that Federal  
7 Defenders notified the government that Mr. Genovese was not  
8 going to sign the bond and sign himself out, so that became  
9 moot. So, in a sense, he punished himself right away to spare  
10 his mother to the victims who would have been galled to see him  
11 walking the street, maybe. He spared them that as well. So  
12 it's a little piece, but it's a piece that I put in for your  
13 Honor to consider.

14 Let me look at my notes. I think I am close to  
15 finishing.

16 On the technical aspects of the loss amount, I have  
17 spoken about this with Mr. Enzer. I know we don't see eye to  
18 eye on this. But to the extent that the guidelines are driven  
19 by the loss figure and that we jump into the category of \$9.5  
20 million, I don't see any reason why the \$718,000 sitting in a  
21 TD Ameritrade account that was there. It would have been maybe  
22 \$600,000 greater had there been some more planning on the  
23 government, the SEC, and the FBI side, maybe the government,  
24 when he was arrested, because there were options that were  
25 expiring. I briefed your Honor about it.

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1           To the extent that there still is \$718,000, I don't  
2           see any reason why that should not be taken off the loss  
3           figure. That doesn't bring it down to the next category, but  
4           if you then take off the profits that he would have made if the  
5           arrest had been handled a little differently, he gets close to  
6           that figure.

7           Then with the business expenses, I touched on this,  
8           but it's hard even for a hedge fund that loses money. An  
9           investor can't come and say to the hedge fund, I know that of  
10          the million dollars I gave you, \$150,000 went towards expenses  
11          over the five years that I was in the fund, I want that back.  
12          You're not entitled to that. There's a reasonable amount that  
13          no investor expects to get back because of commissions, because  
14          of management fees and because of the expenses of running the  
15          hedge fund. Everybody is in it together. If the hedge fund  
16          has to spend money on entertainment and other expenses -- and  
17          now I'm just not talking about entertainment. I'm talking  
18          about things like legal expenses, accounting fees, web fees,  
19          hosting fees, all of the things I detailed in there.

20          THE COURT: Please. \$180,000 in legal fees? For  
21          what? To impede the SEC's investigation? I mean, look at the  
22          legal fee compared to the accounting fee for the three years  
23          the hedge fund was purportedly in business. \$1100 in  
24          accounting fees? You couldn't get an accountant to do your tax  
25          return for \$1100.

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1 MR. EISEMANN: This is assuming that was all captured  
2 in the analysis done by Mr. Halperin's firm. I was trying to  
3 show you what I had documented.

4 THE COURT: I got it all.

5 MR. EISEMANN: The point is only the broader one.  
6 Because if I'm going to come down to dollars, I'm not going to  
7 know enough to be able to answer a question like your Honor  
8 posed. By going up two levels, his sentence increases by two  
9 years or so, whatever I briefed your Honor on. Just advocating  
10 for a more measured approach than that and to understand that  
11 there is nothing about that magic jump point that makes him  
12 have to go up that much.

13 Just looking through my last set of notes, and I think  
14 I'll be done.

15 Your Honor, in sum, I hope that you will obviously  
16 take into account the powerful statements from all four of the  
17 investor victims who testified here, but that you will use your  
18 judgment and decide how much of that outweigh the  
19 countervailing arguments, particularly the ones about the  
20 arbitrariness of the guidelines, and look at the norms that  
21 have been established by other cases.

22 And with that, even if it's disappointing to the  
23 victims who are in court -- and I understand anything less than  
24 life or even less than the 10 years recommended by the  
25 guidelines will be disappointing -- that I hope your Honor

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1 understands and that they will understand that your job is  
2 broader than just to listen to how they've been pained, and  
3 they have been pained and legitimately are angry, but there's a  
4 whole spectrum of facts, circumstances before you, and I hope  
5 that you'll use that to give a more modest sentence than the  
6 guidelines recommend.

7 THE COURT: Thank you, Mr. Eisemann.

8 Mr. Enzer, does the government wish to be heard?

9 MR. ENZER: Yes, your Honor. Briefly.

10 I know your Honor is familiar with my sentencing  
11 submission and with the victim impact statements, so I'm not  
12 going to repeat what's in there.

13 I just want to address a few key points that the  
14 defense made, points that I think are drawn from Mr. Genovese's  
15 letter to your Honor.

16 Defense counsel has done the best he can with this  
17 record, he's been very effective, but there are certain  
18 arguments that he made to your Honor that are drawn directly  
19 from Genovese's letter that are either a fraud on this Court or  
20 reflect such a distorted view of reality that, either way,  
21 whether Mr. Genovese now is trying to lie to the Court or  
22 whether he is so delusional that he believes these claims,  
23 either way, he is a danger to the community, a danger to the  
24 public, the type of recidivist fraudster, conniving con artist,  
25 predator, be it a delusional one or an intentional one setting

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1 out to deceive people, who needs to be incapacitated.

2 And that is one of the Section 3553(a) factors that  
3 your Honor must consider, that your Honor should appropriately  
4 consider. And regardless of what the guidelines are, they call  
5 for a very serious, severe sentence that will keep him  
6 incarcerated long enough to the point where he will not pose  
7 such a great danger.

8 And the facts on this point are very troubling because  
9 he embarked on this scheme in this case at the age of 50. That  
10 is a time when many offenders are aging out of crime. But for  
11 him, this was the greatest crime of his career as a con artist.

12 Your Honor knows he had nine prior convictions,  
13 several of them for fraud-related crimes. And after those,  
14 after multiple stints in prison, including a stint in prison  
15 for a sentence, the high end of which is longer than what the  
16 defendant is asking for now, he embarked on this elaborate  
17 scheme posing as a hedge fund magnate, telling a web of lies to  
18 convince people, using expenditures of money, money stolen from  
19 his victims, to support the elaborate claims of fraud. And as  
20 the scheme continued over time, creating fake documents, fake  
21 account statements, to sell the lie to victims.

22 One of the central tenets of the defendant's letter to  
23 your Honor is that he didn't set out to do this crime, that he  
24 thought this was just a threshold lie about his background, and  
25 that he was actually going to do a great job for his victims,

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1 his clients, and that he had no intention of wasting their  
2 money, and it's just really market losses that caused his loss.  
3 That's in his letter. I'm paraphrasing. His words: I thought  
4 it was a harmless lie, only a threshold falsehood that would  
5 get my business going. That is unsupported by the facts in  
6 this case.

7 Here are the facts. I'm basing this not only on  
8 records that were produced to the defense, but a summary  
9 analysis that we provided to defense counsel of the losses that  
10 Mr. Genovese incurred.

11 In 2015, the first year of the fraud, he lost  
12 \$266,918. 2016, the second year, \$4,179,999 was his trading  
13 loss. 2017, his trading loss was 3.7 million.

14 It is not as though he took all of the investor money  
15 at one moment, traded it and then lost it. What happened is  
16 that he told lies, got money in, spent some of it on trading  
17 and lost it, spent some of it on lavish expenses that your  
18 Honor has heard about, and I will account some of them in a  
19 moment.

20 Then, when he needed more, he told more lies to more  
21 victims. So as an example, Dr. Levine, who your Honor heard  
22 from, he was recruited into this fraud in 2017. That is after  
23 more than 4 million in losses had already been incurred by Mr.  
24 Genovese.

25 At that moment, when he decided to tell Mr. Levine a



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1 series of lies about his personal qualifications, this was no  
2 longer a threshold lie as part of a good-faith effort to test  
3 out his personal trading skills. He knew at that point his  
4 personal skills, if there were any, had failed. He had lost  
5 millions. And, yet, he lied about his qualifications to get  
6 Mr. Levine to give his money. And he provided documents with  
7 fake account numbers about his returns. He gave them a  
8 document representing that one of his hedge funds had quarterly  
9 returns varying from 4 to 18 percent.

10 Mr. Genovese says in his letter to your Honor that  
11 there is boilerplate disclosures. He says: My subscription  
12 agreements contained standard boilerplate language which made  
13 clear that our fund had no track record and that investors  
14 should be prepared to lose everything.

15 Boilerplate language is not an excuse when you know of  
16 facts to the contrary. His boilerplate -- in addition to the  
17 boilerplate, he had marketing materials he gave to Mr. Levine  
18 that said risk level with a scale of one to 10, and he had a  
19 red circle around one putting his fund, one of his funds, at  
20 the lowest risk level. You don't get to put generic  
21 boilerplate language in while simultaneously misrepresenting  
22 this is a low-risk investment.

23 MR. EISEMANN: May I take a look at that. Thank you.

24 MR. ENZER: Mr. Genovese says he doesn't think he can  
25 fairly be blamed entirely for all the losses.

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1           His lies concealed a risk. What they concealed was  
2           that he was incompetent and incapable of managing these  
3           people's money and that he would steal a significant portion of  
4           it, and that risk materialized. He is absolutely responsible.  
5           Market losses are not.

6           And as a frame of reference, your Honor, according to  
7           one commonly used hedge fund index, the HFRI, fund weighted  
8           composite index, the hedge funds that are encompassed within  
9           that index, in the years in question, 2015, 2016, 2017, grew at  
10          12 percent, 13 percent, 14 percent, compared to an \$8.2 million  
11          loss.

12          Separate and apart from the money he lost, he spent a  
13          significant amount on his own lavish expenses. You have heard  
14          some of that from the victims, and I've documented some of it  
15          in the government's sentencing submission.

16          The defense does not seriously dispute, if you look at  
17          the numbers in their two sentencing submissions, that at least  
18          a million was spent by the defendant on inappropriate expenses,  
19          what I'm calling luxury items. That's a million dollars over  
20          the course of two years, 500,000 each year. He was not  
21          entitled to do that. That is an example of greedy behavior.  
22          It is aggravating. And it goes to why he is a predator, it  
23          goes to why he is a danger, and it goes to why a serious  
24          sentence is warranted here.

25          Some of that money, 448,000 was spent on boats,

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1 according to the defense's analysis. According to records the  
2 government produced, \$77,000 was spent on a private jet company  
3 that the defendant used to travel in. He had not given returns  
4 to investors that warranted these kind of expenditures. A  
5 responsible money manager wouldn't do that. This is the  
6 behavior of a con artist stealing from his clients.

7 Much of the expenses that the defense characterizes as  
8 legitimate business expenses are really expenses that go to the  
9 fraud, like spending over \$400,000 on office space. The  
10 purpose behind that is so that you can have meetings with  
11 victims to convince them of the con. That is not a legitimate  
12 business expense, especially when the defendant, when he raised  
13 money from victims, he told them what he would take out of  
14 their money as a fee was 2 percent a year, unless he had great  
15 success, which he never did. 2 percent a year. Generous to  
16 the defendant?

17 If you take 2 percent times two years of the scheme  
18 out of 11 million, that comes to about 448,000. That is the  
19 most that could possibly have been expected by the victims in  
20 terms of money that would have gone into his pocket for the  
21 management of this hedge fund. The rest of it is  
22 misappropriated, under his own representations.

23 Your Honor, the factors that are relevant here, the  
24 first is that this is an egregious and troubling predatory  
25 scheme. Because of that, the seriousness of the offense warrants a

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1 sentence at the high end of the guidelines range, which is what  
2 the government is asking for. The guidelines range, there is  
3 no dispute here, is 121 to 151 months. That comes out to  
4 roughly 10 to 12 and a half years. Probation has recommended a  
5 sentence of 132 months, or 11 years.

6 And probation is an independent arm of the Court.  
7 They did their own investigation. They see cases day in and  
8 day out. They have the ability to compare offenders that they  
9 interview and make determinations about how one person stacks  
10 up to another. Their recommendation is 132 months. We submit  
11 it should be higher. But, in any event, it certainly should  
12 not be below guidelines. It shouldn't be five years, what the  
13 defense has asked for, a sentence that is lower than the last  
14 sentence the defendant got in some of his New York State  
15 convictions.

16 The history and characteristics of the defendant. As  
17 your Honor has heard, he's had virtually no legitimate  
18 employment over the course of his adult life. And that is not  
19 a product of a bad upbringing. He grew up in a relatively  
20 privileged upbringing. We have set that forth in our  
21 submission. The facts of it are in the presentence report.

22 Compared to the average defendant who appears before  
23 your Honor, he had extreme privilege growing up. There was no  
24 reason he needed to turn to crime and certainly no reason he  
25 needed to embark on this fraud after the nine other convictions

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1 he had, and yet he did anyway. That tells you a lot about who  
2 he is, his history, his characteristics. He is someone who is  
3 either evil or completely deluded. Either way, he is the type  
4 of danger to the community that needs to be incarcerated for a  
5 very, very long period of time.

6 He has said that he has had success in day trading.  
7 That appears to be based only on Mr. Genovese and nothing else.

8 Finally, your Honor, deterrence and the need to  
9 protect the public. Deterrence generally is important. It is  
10 important for the public and for anyone who would emulate Mr.  
11 Genovese to know that a recidivist con artist with nine  
12 convictions doesn't get to fleece a bunch of other victims and  
13 walk out of here with a light sentence. And it's important to  
14 deter him because he has demonstrated, through his conduct over  
15 the course of his adult life, that no prison sentence, no  
16 supervision is going to stop him unless it's serious. None of  
17 the other ones did. It's important that this sentence stop him  
18 in his tracks.

19 He's now 54. He is just as capable today of spinning  
20 lies to raise money. Only a serious and long sentence has a  
21 chance of putting a stop to him, at least until he gets out  
22 again.

23 With that, your Honor, I'll sit down.

24 THE COURT: Thank you, Mr. Enzer.

25 MR. EISEMANN: Can I reply briefly to the government's

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1 argument?

2 THE COURT: Two minutes. All right. The record  
3 should reflect that you already have addressed the Court for  
4 just shy of an hour. Mr. Enzer just addressed the Court for 10  
5 minutes.

6 MR. EISEMANN: I'll take two minutes, your Honor.

7 THE COURT: That's all I'm giving you.

8 MR. EISEMANN: Give or take a few seconds.

9 The government uses rhetoric: Danger to the  
10 community, predator. It's all rhetoric, your Honor.

11 The fact is that on supervision Mr. Genovese could be  
12 controlled, to the extent that he's out there. He's not  
13 someone who can't be monitored. It's a fallacious argument.

14 Retribution I understand. That aspect I understand.  
15 Not because he's a danger to the community. He said he started  
16 a scheme at 50. I addressed this. He started a scheme that  
17 despite everything he did to keep it going -- and that's not an  
18 unusual thing that happens in fraud cases. The fraud gets  
19 perpetuated by more fraud to keep it going. When it started to  
20 fail he still set out to do a legitimate thing and it's still  
21 proven by the fact that he invested.

22 The statement, the bold statement that he was either  
23 incompetent or incapable of investing the money, the track  
24 record doesn't show that he had some superior skill in it, but  
25 it also doesn't show that other hedge funds that were doing the

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1 same types of tradings were losing money.

2 There were other hedge funds besides the ones in the  
3 index that Mr. Enzer purports that went belly up, big hedge  
4 funds that failed. These were spectacular failures and it  
5 wasn't because everybody was a criminal going into it. It is  
6 because it's a very risky thing to go in and trade on options,  
7 and it didn't work out.

8 But for the fact that there was fraud to get the  
9 money, he wouldn't be prosecuted for it not working out. It  
10 just meant that either market forces did it, or he wasn't as  
11 good as others, and there are some aspects he's touched on in  
12 his letter to your Honor about why it didn't work out. He's  
13 admitting there was inexperience he had, that if he had, for  
14 instance, a dedicated broker in there, he could have executed  
15 trades faster, wouldn't have been at the whim of the market.  
16 There were things he did wrong, but that doesn't make  
17 everything a fraud.

18 The million dollars, just in terms of money that was  
19 taken out, that's the maximum figure. I'm asking your Honor to  
20 assume that to be true and yet still follow my guidelines  
21 arguments.

22 Our position is, about \$600,000 of that is probably  
23 fairly characterized as Mr. Enzer did, but 400,000 is not.  
24 He's entitled to take out \$400,000 over the two years using the  
25 2 percent rule, which is standard in the industry. He's making

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1 200,000 over that. Maybe he is 600,000 over it. That's not  
2 our position, and we are not conceding that point.

3 The last point I'll make is that in saying that he  
4 turned to crime at 50, I won't belabor the point that he was  
5 turning to a threshold and then a perpetuating lie to do  
6 something he thought would make a legitimate living for him.

7 You have a report from a psychiatrist talking about  
8 the factors that also drove him to do this. It's not an abuse  
9 excuse. It's simply a fact that not everybody goes into things  
10 with venality, and Mr. Genovese did not go into this with  
11 venality. There were certainly selfishness in it in the  
12 decisions he made, but it is not as if he were some  
13 pathological, amoral, incapable of doing anything other than  
14 preying on victims and intending to steal their money. That's  
15 not the situation you have, and, with all due respect, I think  
16 you shouldn't sentence him as if it were.

17 THE COURT: Mr. Eisemann, does your client wish to  
18 address the Court before sentence is imposed?

19 MR. EISEMANN: Briefly.

20 THE COURT: He can do so from counsel table and he can  
21 remain seated. If you would pull the microphone toward him so  
22 that everyone in the courtroom can hear.

23 THE DEFENDANT: Excuse me, your Honor. I've got an  
24 upper respiratory infection right now.

25 I want to touch on two things. The smallest of



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1 importance first and then the biggest importance last.

2 The first thing I wanted to address is something  
3 you've brought up several times that I've been in court,  
4 including today with much colorful admonition.

5 The good thing is that my mother is here today to  
6 attest to the truth and veracity of what I'm going to say.

7 That is, my first counsel, Sabrina Shroff, who was  
8 only my lawyer for one or two appearances, we removed because  
9 my family offered to help me out with counsel.

10 Then we hired Mr. Little. Mr. Little, as you well  
11 know, was not prepared for sentencing just before the blackout  
12 occurred or right after. I don't recall. The bottom line is,  
13 Mr. Little defrauded my mother of tens of thousands of dollars  
14 by not performing the work. I have numerous emails begging him  
15 to do the job that he did not do, and we will address that in a  
16 civil matter later on.

17 The other matter I wanted to bring up is Mr. Halperin.  
18 He was referred to us through my mother's attorney in Chicago,  
19 and we thought he was an immensely qualified person and, sadly,  
20 he defrauded my mother of tens of thousands of dollars as well.  
21 On top of that, there is some fraudulent billing that we are  
22 claiming, some massive fraudulent billing that is  
23 unsubstantiated by Mr. Halperin, and we will address that.

24 That's where the delays have been and why I've had to  
25 change counsel, because none of them have been up to the job.

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1 And, sadly, my mother, being 75 years old, my father passing  
2 away, she is living on a fixed income and that money she could  
3 have used in her retirement, and now she's living week by week  
4 because of the money she had to pay out, the over a hundred  
5 thousand dollars in real money that she's had to pay.

6 But the main point I wanted to address to your Honor  
7 is to give you the courtesy -- because you're not a mind  
8 reader. You're a very smart guy, but you are not a mind  
9 reader. That is, my two previous counsels were completely not  
10 up to the job, and they were very disingenuous with you, and  
11 there was not much I could do other than listen to their  
12 constant promises that were not fulfilled for me. I apologize  
13 for any misunderstanding you might have in that.

14 Unfortunately, my mother is suffering greatly from  
15 this and, of course, my case is suffering because you think it  
16 might be some kind of scheme or something, and I think we are  
17 all frustrated by it, including myself, and I know you are, and  
18 I apologize to you for that. I apologize to the government and  
19 to everyone else, that it was not our intent to waste money and  
20 waste the Court's time.

21 With that, I would like to move onto the more  
22 important issue. And, that is, I'd like to address the Court.  
23 I would like to thank your Honor for the courtesy. I'm not  
24 much of a public speaker, but I'm going to try and put forth my  
25 thoughts from my heart.

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1 I said a lot in my letter to you, your Honor, and I  
2 think a lot -- I'm going to diverge from this, what I wrote, a  
3 little bit because we do have some ex-clients here today. And  
4 I'm not going to look at them, but I want to say that for them  
5 to say that they think that our friendship was a fraud is  
6 wrong, and that I loved them then, I love them today, and I  
7 think that I'm very hurt by that feeling. But I take full  
8 responsibility for how they feel and what I've done, and I have  
9 allocuted that, and I admitted to that. And I wanted to say  
10 that I apologize to them from my heart. And I know that's not  
11 going to bring back money or anything from what I've done.

12 I want to apologize to my mother as well for putting  
13 her through this.

14 I want to apologize to the SEC and the government, the  
15 FBI.

16 But, more importantly, and number one, I want to  
17 apologize to the victims, that they entrusted me with their  
18 money, and I broke that trust. I want to make that very clear,  
19 that that's the number one thing in my mind right now.

20 Thank you very much, your Honor.

21 THE COURT: All right.

22 The defendant, Nicholas Genovese, comes before this  
23 Court having pled guilty to securities fraud, a serious crime  
24 against the United States that strikes at the heart of our  
25 nation's financial system.

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1           This Court reviewed the presentence investigation  
2       report. I adopt the findings of fact in the report as amended  
3       today on the record as my own, and I will cause the presentence  
4       report to be docketed and filed under seal as part of the  
5       record in this case after I receive counsel's joint letter  
6       regarding the specific changes that were discussed on the  
7       record here earlier today.

8           Turning to the guidelines calculation, this case  
9       sounds in fraud, and so the base offense level is 7. Because  
10      the total loss from the offense is more than \$9,500,000 but  
11      less than \$25 million, 20 levels are added.

12          Because this crime involved 10 or more victims and  
13      resulted in substantial financial hardship to one or more  
14      victims, a further two-level enhancement is warranted. And  
15      because the offense involved a violation of the securities law,  
16      and at the time the defendant was an individual holding himself  
17      out as a broker or dealer or investment advisor, a further  
18      four-level enhancement is appropriate under the guidelines.

19          Now, Mr. Genovese, did come forward before the Court  
20      and plead guilty. Accordingly, I grant him a three-level  
21      reduction for acceptance of responsibility, and so that yields  
22      a total offense level of 30.

23          Now, considerable ink was spilled in the parties'  
24      presentence submissions concerning the defendant's criminal  
25      history. Suffice it to say, for the purposes of this record,

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1 this Court finds that his criminal history was properly  
2 calculated by probation and yields a criminal history category  
3 of III. So with a total offense level of 30 and a criminal  
4 history category of III, the defendant's guideline range is 121  
5 to 151 months of imprisonment.

6 Now, of course, as the parties have acknowledged in  
7 their arguments, the guidelines are a starting point for the  
8 Court's consideration here. The defendant argues for a  
9 substantial variance down from the guideline range. The  
10 government urges the Court to sentence Mr. Genovese at the top  
11 of the guideline range.

12 Mr. Genovese's fraudulent scheme unraveled when the  
13 SEC examiners went to Willow Creek's offices at One Liberty  
14 Plaza in late December 2017 to perform a surprise site visit.  
15 Mr. Genovese refused to let the SEC examiners into Willow  
16 Creek's office space. And later that day the SEC formally  
17 advised Mr. Genovese and his hedge fund that they were the  
18 subject of an SEC investigation. The SEC issued a subpoena  
19 compelling Mr. Genovese to appear for a deposition on  
20 January 30, 2018.

21 When Genovese failed to appear, the FBI opened a  
22 parallel criminal investigation and, on February 1, 2018,  
23 attained an arrest warrant for Genovese.

24 On February 2, FBI agents located and arrested  
25 Genovese while he was sitting in a vehicle at a Starbucks

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1 parking lot in Fort Lauderdale, Florida. During a search of  
2 the vehicle, the agents discovered \$148,000 in cash, travel  
3 bags, and luggage, Mr. Genovese's passport, and his dog.

4 Since that time, he's been detained. From early 2015  
5 until his arrest, Mr. Genovese raised millions of dollars from  
6 victims for investments in Willow Creek Advisors by making  
7 fraudulent misrepresentations about his background, his  
8 professional qualifications, by concealing that he had a number  
9 of prior felony convictions for fraud-related claims, that he  
10 had previously filed for bankruptcy, a whole litany of  
11 misrepresentations and omissions.

12 How Mr. Genovese managed to fly under the radar of  
13 securities regulators and trusting investors for so long is a  
14 difficult question to answer. Perhaps it's because he is a  
15 serial fraudster who knows how to manipulate people and the  
16 system.

17 In any event, were it not for the quick work of SEC  
18 and law enforcement agents, this Court has no doubt that Mr.  
19 Genovese would have fled the country.

20 Securities fraud is a crime that screams for general  
21 deterrence. If swindlers think that they can get away with it,  
22 innocent investors and hard-working individuals are the ones  
23 who suffer.

24 As the victim-impact statements that were submitted to  
25 the Court and the poignant remarks by various investor victims

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1 here today make clear, many trusting and decent individuals  
2 have been deeply injured by Mr. Genovese's fraud, and a number  
3 of them may not recover from their financial and psychological  
4 losses.

5 There's also a compelling need for specific deterrence  
6 because Mr. Genovese is a serial fraudster. He has 17 arrests  
7 and nine convictions dating back to December 1989, when he was  
8 only 24. Virtually all of them relate to fraud of one kind or  
9 another, with the dollar amounts escalating each time.

10 It appears to me that he became quite an expert at  
11 credit card fraud and sentences of 10 months in prison and 30  
12 months in prison didn't deter him.

13 Then he graduated to fraudulent schemes on eBay that  
14 led to a sentence here in New York of three to six years  
15 prison.

16 And of course there was his scheme to sublet an  
17 apartment in Manhattan on Craigslist to multiple individuals in  
18 which he collected more than \$20,000 for an apartment he  
19 himself was not paying rent on and was prohibited from  
20 subletting.

21 As I've previously indicated in a question to counsel,  
22 in 2005, he earned the distinction of being extradited from  
23 Florida to face arrest warrants here in New York that had been  
24 issued nearly a year earlier.

25 His prior arrests and convictions are relevant to this

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1 Court's individualized assessment under 3553(a). Mr. Genovese  
2 has assembled quite a body of work as a fraudster and the need  
3 for specific deterrence is compelling given that prior terms of  
4 imprisonment do not have appear to have dissuaded him from  
5 further criminal conduct.

6 Now, in the submissions Mr. Genovese's attorney and  
7 forensic psychologists suggest that his criminal conduct stems  
8 from his lack of self-esteem and his personal disappointment  
9 that his grandfather did not give him a manufacturing business  
10 in Chicago and chose instead to sell it to a third party. This  
11 Court cannot swear that assessment with the facts.

12 Mr. Genovese was raised in a firmly middle-class  
13 environment. His mother and father provided a caring home for  
14 him, and his mother continues to worry about him and provides  
15 support, even though he's now almost 55. Unlike many  
16 defendants who come before this court, Mr. Genovese had  
17 abundant opportunities to make something of himself and become  
18 a productive member of society.

19 His conduct at Willow Creek suggests anything but  
20 someone who lacks self-esteem. He exuded self-confidence,  
21 renting Maseratis when he visited clients in Los Angeles,  
22 cruising with clients in his Mahogany power boats on Lake  
23 George, dropping \$50,000 on a table at a New York Philharmonic  
24 fundraiser, and wining and dining people wherever he went.

25 Of course, to those investors, I guess it all looked



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1 great, but little did they know it was all their money.

2           Indeed, even in Mr. Genovese's letter to this Court  
3 for sentencing he immodestly says that he thinks he was  
4 "talented, but recognizes that talent alone wasn't enough."

5           The reality is that he had no idea what he was doing  
6 investing, but it was all just a great ride for him.

7           He argues that the loss amount should be reduced  
8 because he didn't steal it; he just lost almost all of it in  
9 the market. Defendant's arguments are galling.

10           First, Genovese suggests that but for his arrest, he  
11 would have made an additional and \$526,195 on Facebook options  
12 that he purchased on January 31, 2018, after he failed to  
13 appear for a deposition and knew the weight of the federal  
14 government was coming down on him.

15           The defense attributes this 526,000 loss not to Mr.  
16 Genovese, but "because of the unfortunate timing of his arrest  
17 and the apparent lack of planning by law enforcement on how to  
18 handle an account that likely contained time-sensitive options  
19 with hundreds of thousands, or perhaps millions, of dollars at  
20 risk." Talk about chutzpah.

21           Two days after he purchased the options he was  
22 arrested in an automobile in Florida with \$148,000 in cash.  
23 Only Mr. Genovese knows what his travel plans were, but they  
24 certainly didn't include exercising an option for the benefit  
25 of his investors at the optimal moment.

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1 His other arguments have also been thoroughly  
2 considered and lack merit. The notion that the business of  
3 Willow Creek was legitimate turns the world upside down.

4 What are the legitimate expenses of a fraudulent  
5 investment company? 180,000 in legal expenses to keep  
6 regulators at bay, and only \$1100 in accounting fees, \$18,000 a  
7 month for an office. None of it makes any sense.

8 What does make sense is that he used Willow Creek  
9 investors' money for his own personal gratification and was  
10 totally reckless, spending more on power boats than anything  
11 else. None of it warrants any reduction in the loss amount.

12 I mean, among the misrepresentations, Mr. Genovese  
13 concealed his criminal record, and prior bankruptcy, claimed to  
14 have graduated from Dartmouth's school of business and to hold  
15 a finance degree from the University of Kentucky, and to have  
16 been a partner at Goldman Sachs and a portfolio manager at Bear  
17 Stearns, and that he had the backing of the Genovese drugstore  
18 chain fortune. He never had any of that, and he told at least  
19 one victim that he managed a \$30 billion fund and another  
20 victim that his returns were between 30 and 40 percent.

21 It was all a fraud. Defense counsel's reliance on a  
22 couple of decisions by other judges to grant dramatic variances  
23 from the sentencing guidelines are not persuasive.

24 The law requires a judge to make an individualized  
25 assessment of a defendant. And to cite cases where defendants

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1 had no criminal history and whose lives were otherwise marked  
2 by good works is just not relevant to Mr. Genovese. Those  
3 individuals in the cases cited by counsel are unlikely to  
4 recidivate, a conclusion that this Court cannot draw with  
5 respect to Mr. Genovese given his 30-year history of fraud.  
6 This Court is concerned that when Mr. Genovese is released from  
7 prison he'll concoct another more outrageous scheme because  
8 that's been his trajectory for the last 30 years.

9 In short, he is a danger to the community, truly a  
10 predator, unlike any I've encountered in more than 21 years on  
11 the bench.

12 Now, looking at his history and characteristics and,  
13 as I said, the compelling need for specific deterrence here, I  
14 find that a sentence within the guideline range is entirely  
15 appropriate. And weighing all the material that's been put  
16 before this Court, I'm now prepared to impose sentence on the  
17 defendant, and I'd ask him to stand.

18 Mr. Genovese, I don't know whether the sentence I'm  
19 about to impose is going to deter you from future conduct. I  
20 hope so, but I don't know.

21 It's my judgment, sir, that you be sentenced to a term  
22 of 140 months of imprisonment, to be followed by three years of  
23 supervised release, subject to all the standard conditions of  
24 supervised release, and the following special conditions that  
25 I'll impose on you in a moment.

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1 I'm also going to enter an order for restitution in  
2 the amount of \$11,211,704. I'm going to also impose the  
3 mandatory special assessment. And I'll enter an order of  
4 forfeiture that I understand the government will be handing up.

5 As for the special conditions of supervised release,  
6 I'm going to require to you provide access to any requested  
7 financial information, not to incur any new credit card charges  
8 or open additional lines of credit without the approval of your  
9 probation officer unless you're in compliance with the  
10 installment payment schedule that I'm going to fix.

11 You'll participate in an outpatient treatment program  
12 approved by probation to include testing to determine whether  
13 you've reverted to using drugs or alcohol, and I'll require to  
14 you contribute to the cost of services rendered based on your  
15 ability to pay and the availability of third-party payments.  
16 In that regard I authorize the release of available drug  
17 treatment evaluations and reports, including the presentence  
18 investigation report, to the substance abuse treatment  
19 provider.

20 Fourth, I'm going to require you to submit your  
21 person, residence, place of business, vehicle, and any property  
22 or electronic devices under your control to a search on the  
23 basis that your probation officer has a reasonable suspicion  
24 that contraband or evidence of a violation of the conditions of  
25 your release may be found. That search may be conducted at a

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1 reasonable time and in a reasonable manner, and you're failure  
2 to submit to such a search may be grounds for revocation. You  
3 must inform any other residents of the premises where you  
4 reside upon your release that those premises may be subject to  
5 search pursuant to this condition.

6 Fifth, you are not to own or have any control of any  
7 business that functions as an investment hedge fund or  
8 investment advisory firm, nor are you to be employed or act in  
9 any capacity or represent yourself as a financial advisor, fund  
10 manager, securities trader, or financial broker.

11 With respect to restitution, I'm requiring you to pay  
12 15 percent of your gross monthly income towards the  
13 satisfaction of restitution.

14 Now, this Mr. Genovese constitutes the sentence of  
15 this Court. I advise you that to the extent you've not  
16 previously waived your right to appeal, you have the right to  
17 appeal. I advise you further that if you cannot afford  
18 counsel, counsel will be provided to you free of cost.

19 Mr. Eisemann has done an excellent job representing  
20 you, but, quite frankly, sir, you didn't give him much to work  
21 with.

22 You are going to go away now for a well-deserved term  
23 of imprisonment. And when you're released on supervised  
24 release, God willing, I'll still be sitting right here. And if  
25 you violate the terms of your supervised release and are

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1 brought back, I can assure you, sir, that whatever the maximum  
2 statutory sentence is that I can impose for a violation of  
3 supervised release, I will impose it. So don't put yourself in  
4 the position of coming back before me. And maybe, for the  
5 first time in your life, when you get out, you could get an  
6 honest job and actually tell the truth when you talk to people  
7 about anything.

8 You may be seated.

9 Is there anything any further applications?

10 MR. ENZER: Nothing further from the government, your  
11 Honor. Thank you.

12 THE COURT: Anything further, Mr. Eisemann?

13 MR. EISEMANN: A few, your Honor.

14 The restitution amount. The 15 percent, can that be  
15 after his release so that he -- the meager amount he makes in  
16 jail to pay for commissary, things like that, doesn't get  
17 applied towards restitution. It's not going to make much of a  
18 difference to the victims.

19 THE COURT: I will grant that application.

20 MR. EISEMANN: In terms of a recommended designation,  
21 his mother is the person who will be coming to visit him. I  
22 think he is eligible for a camp because he has less than 10  
23 years to go. She can't see him. The closest one to Chicago I  
24 think is in South Dakota, and that's a long drive for her. In  
25 looking to find institutions that are easily accessible from

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1 airports, a flight from Midway to Baltimore is an easy flight  
2 for her to make, and there is a camp at Cumberland, FCI  
3 Cumberland. That also happens to have a residential drug  
4 treatment program, which I'm going to ask your Honor to  
5 recommend for Mr. Genovese. So I'm asking if you could make a  
6 recommendation that he be designated to that institution and  
7 also that he be in a residential drug treatment program.

8 THE COURT: First, I don't make the recommendation to  
9 the Bureau of Prisons about any specific institution. That is  
10 a security decision that only the Bureau of Prisons can make.

11 I will recommend that he be housed at a facility as  
12 close to the Baltimore area as possible, and I will make a  
13 recommendation that he be considered for the drug treatment  
14 program.

15 MR. EISEMANN: Thank you.

16 One other thing, your Honor. This is still uncharted  
17 waters for me somewhat.

18 The Second Chance Act I think allows your Honor at the  
19 time of sentencing to recommend an additional six months of  
20 either halfway house or home confinement to help integrate  
21 someone into society, and I'd ask that you make that  
22 recommendation, to the extent have you the power to do it, so  
23 the Bureau of Prisons can consider that. I believe it's a  
24 warden's call, but they will be guided by your recommendation.

25 THE COURT: No, I'm not going to make that

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1 recommendation. He needs to be out of society, period.

2 MR. EISEMANN: OK. Nothing further, your Honor.

3 THE COURT: All right. This matter is concluded.

4 MR. EISEMANN: Your Honor, one application. His  
5 mother has not seen him in a long time. She's here in the  
6 courtroom. If the marshals would permit it, can he be at the  
7 rail and give her a hug?

8 THE COURT: No. That's a security issue. I am not  
9 going to direct the marshals to do that.

10 MR. EISEMANN: May I have a moment to ask them if  
11 they'll do it?

12 THE COURT: No. The marshals take directions from the  
13 judge. It's a security issue.

14 I regret it. I feel sorry for his mother. His mother  
15 is obviously suffering, like victims suffer. I know from her  
16 own letter to me that she knew nothing of what Mr. Genovese was  
17 up to until she got a message from the Bureau of Prisons  
18 inviting her to join the chats so that she could communicate  
19 with her son. That was the first that she heard about his  
20 arrest.

21 She has every reason to be disappointed in him. I'm  
22 sure she loves him, but he hasn't done much to earn that.

23 (Adjourned)  
24  
25